



Office of Inspections
Office of Inspector General
U.S. General Services Administration

**GSA's Performance and Appraisal
System for Senior Executives Remains
Deficient**

JE20-001

June 9, 2020

Introduction

The Office of Inspector General (OIG) of the General Services Administration (GSA) initiated an evaluation of GSA's Senior Executive Service (SES) performance appraisal system in response to a Hotline complaint. The complaint alleged that GSA violated the legal requirements of its SES Performance Rating System.

Our review covered the period fiscal year (FY) 2016 through FY 2018, representing three performance appraisal cycles. We assessed current GSA executive performance appraisal practices and sought to determine whether GSA management addressed key issues identified in our prior report in this subject area, *GSA Practices for Executive Performance Recognition and Awards*, May 16, 2013 (2013 report).

The GSA Office of Human Resources Management (OHRM) is responsible for the system for evaluating SES performance. Our 2013 report found deficiencies in each stage of GSA's SES performance management system that violated legal and policy requirements, and failed to protect the rights of SES members. This evaluation revealed that GSA management has not taken adequate corrective action to address the following findings in our 2013 report:

- Failing to provide meaningful summary ratings;
- Failing to provide meaningful opportunities for a higher-level review;
- Failing to provide timely performance plans;
- Failing to publish Performance Review Board (PRB) membership in the Federal Register, and;
- Violating legal requirements of SES award practices.

We also identified additional legal and policy deficiencies relating to GSA's higher-level review practices.

Our report makes six recommendations to address the issues identified during the evaluation. In response to our report, GSA management agreed with our findings and recommendations. Management's comments can be found in their entirety in the Appendix.

Background

Establishment of the SES performance system

The Civil Service Reform Act of 1978 created the Senior Executive Service and empowered the U.S. Office of Personnel Management (OPM) to prescribe rules and regulations for the SES, including rules that govern agency SES performance management systems.¹ OPM has primary responsibility for evaluating an agency’s executive performance appraisal system.²

Following our 2013 report, GSA adopted the basic SES appraisal system issued by OPM.³ GSA Order, *GSA Associate Performance Plan and Appraisal System*, CPO P 9430.1, (Order), establishes the agency’s policy for executives to achieve organizational and individual performance goals by outlining the agency’s method to develop, document, and communicate individual performance goals, measures, and expectations.⁴ Under the Order, OHRM is responsible for providing the agency guidance concerning laws, regulations, and policies applicable to SES performance management.⁵

Both the Order and 5 C.F.R. § 430.306 require supervisors to develop and communicate performance plans for executives on or before the beginning of each appraisal period. Each plan identifies five critical elements GSA executives are to be rated on: Leading Change, Leading People, Business Acumen, Building Coalitions, and Results Driven. Supervisors assess the executives’ performance at the end of the appraisal period and assign a rating to each critical element, from Level 1 (unsatisfactory) to Level 5 (exceptional).

¹ The Senior Executive Service was established by Title IV of the Civil Service Reform Act of 1978 [Pub. L. 95-454, October 13, 1978] and became effective on July 13, 1979. For the Office of Personnel Management’s general authority see 5 U.S.C. 1103 (2020); see also 5 CFR 430.301 (2020) (requiring approval for agency SES systems).

² The Office of Personnel Management issues the SES Desk Guide on a periodic basis as a working draft; the 2016 and 2018 SES Desk Guides are applicable to the scope of our review and will be hereafter referred to as “SES Desk Guide.”

³ OPM issued a government wide model SES performance appraisal system framework. The system focuses on the role and responsibility of SES employees to achieve results through effective leadership skills, and provides agencies with a standardized approach to managing performance. (OPM Memo, *Senior Executive Service Performance Appraisal System*, January 4, 2012.)

⁴ *GSA Associate Performance Plan and Appraisal System*, CPO P 9430.1, December 31, 2003, revalidated January 10, 2019.

⁵ For the remainder of the report, individuals appointed as members of the Senior Executive Service are referred to as “executives.”

Performance process roles and responsibilities

The Executive Resources Division of OHRM (Executive Resources) provides agency assistance in recruitment and staffing, performance appraisal services, and development services for executives.⁶ These services include responsibility for establishing administrative controls to manage the performance plan and appraisal system for executives, working with managers to ensure performance plans are issued on a timely basis, ensuring that summary appraisal data and supporting documents are collected and maintained for at least five years from the date they are issued, and supporting the PRB in its evaluation of the SES performance appraisal process periodically to determine its effectiveness.

At the end of the performance period, the executive's supervisor develops an overall initial summary rating based on the rating and percentage weights assigned to each critical element. Federal regulations provide executives the right to see and acknowledge their initial summary rating, and submit a written response. Additionally, executives may request and receive additional review by an official at a higher level who did not participate in the summary rating.⁷ An agency must offer an alternative review where a higher-level review is requested and the agency head provided the initial summary rating.⁸ The higher-level review official may not change the initial summary rating, but can recommend a different rating to the PRB. Higher-level reviews must be conducted before the PRB receives an executive's initial summary rating.⁹

If a GSA executive requests a higher-level review, OHRM is responsible for arranging the review. The signed initial summary rating, completed higher-level review, and any additional documentation, such as the executive's written response, are sent to Executive Resources, which in turn provides these items as a performance package to the PRB for consideration. The PRB reviews the performance package, and conducts any further review needed to make its recommendations.¹⁰ GSA's Chief Human Capital Officer, the Executive Resources supervisor, and Executive Resources staff may provide support to the PRB during its deliberations. The PRB then makes recommendations to the Appointing Authority for each executive's annual summary

⁶ Office of Human Resources Service Level Agreement, October 1, 2016. The Executive Resources Division is under the GSA Office of Human Resources Services and has primary responsibility over executive related measures.

⁷ A higher-level review is a secondary review of an initial summary rating. 5 C.F.R. § 430.309(2).

⁸ 5 C.F.R. § 430.309 (e)(2)(ii).

⁹ 5 C.F.R. § 430.309.

¹⁰ 5 CFR 430.311 (b)(1).

rating, performance-based pay adjustments, and performance awards. The GSA Appointing Authority is the Administrator.¹¹

Upon consideration of the recommendations from the PRB, the Administrator makes the final determinations and issues the final annual summary ratings.¹² If the executive receives a Level 1 for any single critical element, their overall rating is Level 1, which requires their reassignment or transfer, or their removal from the SES. OHRM is then responsible for reporting the results to OPM annually.

Issues identified in 2013 report reviewed in this report

In our 2013 report, *GSA Practices for Executive Performance Recognition and Awards*, we found that GSA violated many of the legal requirements for SES programs. We provided four recommendations to address our report findings. GSA accepted the recommendations and stated that it would “redouble its ongoing efforts to reform its Senior Executive Service and agency-wide performance management systems.”¹³ The deficiencies we identified fell into four general categories: evaluation practices, award policy and practices, record retention practices, and reporting practices. For the period of this evaluation, FY 2016 to FY 2018, we did not identify concerns regarding GSA’s SES awards policy or record retention practices. As a result, this report focuses on GSA’s executive performance evaluation and award practices.

The deficiencies noted in the 2013 report included GSA’s failure to provide executives with initial summary ratings before consideration by the PRB, provide executives any meaningful opportunity for higher-level review, provide PRB reviews of the Administrator’s direct reports, ensure timely communication of performance plans to executives, provide performance evaluations based on action and not predicted work, and publish PRB membership in the Federal Register.

In this evaluation, we determined that GSA has addressed many of the issues that our 2013 report identified by adopting the OPM Basic SES Performance Appraisal System, thus ensuring the PRB reviewed the Administrator’s direct reports, and supervisors provided executives with initial summary ratings before consideration by the PRB. However, we found continuing issues of concern with GSA’s practices regarding initial summary ratings and

¹¹ For the remainder of the report, all references to the appointing authority in federal regulation and policy will be referred to as the “Administrator.”

¹² GSA Order CPO P 9430.1 Ch. 2; 5 U.S.C. § 4311 – 4315; 5 C.F.R. § 430.308; SES Desk Guide Ch. 5.

¹³ <https://www.gsaig.gov/content/gsa-practices-executive-performance-recognition-and-awards-0>, Appendix B for full management response (page 20).

meaningful higher-level review, timely performance plans, publication of PRB membership, and a prohibited award practice. We also found new issues with GSA's higher-level review practices.

Finding

Significant deficiencies remain in GSA's executive evaluation practices

During our review of GSA's performance and appraisal system for the period FY 2016 through FY 2018, we found that some deficiencies we identified in our 2013 report continue to exist. We found that in some instances, GSA did not follow federal regulations, the SES Desk Guide, or their own policy and guidelines when evaluating executives' performance.

Initial summary ratings and higher-level review

In our 2013 report, we found that GSA skipped the initial summary ratings, the event that triggers an executive's opportunity to request a higher-level review. Our 2013 report found that GSA failed to provide executives with any meaningful opportunity for a higher-level review under 5 C.F.R. § 430.308.

Although GSA now provides initial summary ratings to executives, our review found a significant instance during the FY 2017 rating period where an executive was denied a meaningful opportunity for a higher-level review. Although the supervisor provided this executive a level 4, "commendable" initial summary rating on December 5, 2017, the supervisor did not tell the executive about a pending penalty assessment report, a report that was considered by the PRB and ultimately resulted in the Administrator assigning a level 1 rating to, and reassigning, the executive.

Higher-level reviews are only applicable to initial summary ratings. By interjecting a new analysis and subsequent penalty assessment report after the initial summary rating, GSA did not allow the supervisor to discuss the findings of the report with the executive, or allow the executive a chance to request a higher-level review. As a result, the PRB, not the rating official, was the first to consider a substantive performance document for the executive.

GSA decided to seek outside assistance for assessing performance for this executive applicable to the FY 2017 rating period. Having recognized the importance of getting a neutral third party's assessment of the executive's performance, GSA should have deferred their initial summary rating until the rating official had received the assessment and shared it with the executive. Importantly, the agency's policy provides ample discretion for scheduling initial summary ratings. Rather than establish a firm deadline for completing ratings, GSA's appraisal system only provides that the agency "normally" completes ratings three months after the end of the

appraisal period.¹⁴ GSA had the authority to defer any executive’s initial summary rating, and in fact did so for another in the same performance period. However, GSA did not delay scheduling the initial summary rating for this executive pending receipt of the penalty assessment report. Notably, GSA deferred the PRB’s consideration of this executive’s rating until OHRM received the penalty assessment report.

The SES Desk Guide mandates that there “must be a discussion between the supervising official and the executive so that the official can review the appraisal with the executive, provide guidance and any necessary counseling, and receive feedback from the executive.”¹⁵ Holding the performance review before either the rating official or the executive received the penalty assessment report made that discussion meaningless.¹⁶ Although the agency gave the executive five days to provide the PRB a written response to this new information, a process that lacks the benefits afforded by law is unacceptable and remains a continuing concern from our 2013 report. The higher-level review process created by law gives the executive a right to an independent review, and not just the executive’s own view. GSA denied this executive that benefit.

GSA should have deferred the initial summary rating until its executive received the report, so the executive could provide a written response and discuss the report’s conclusion with their initial summary rater. The executive then also would have had a meaningful opportunity to request a higher-level review, in order that the PRB received an opinion other than the executive’s own views. GSA could have, but did not, defer the initial summary rating. Instead, GSA denied this executive any meaningful opportunity to exercise their right under law to a higher-level review.

Executives not provided timely performance plans

Federal regulation requires that the agency must establish performance plans for all executives on or before the beginning of the appraisal period, and that the plans cover a minimum of 90 days.¹⁷ We found that the issue of untimely performance plans, identified in our 2013 report, persisted. From FY 2016 through FY 2018, we found 126 instances in which executives received their plans more than 90 days after the beginning of their appraisal period. Of particular concern, in FY 2018, 89 percent of the executives received their performance plans more than 90 days

¹⁴ GSA Senior Executive Service Performance Management System Revised November 2017 at §9, page 7.

¹⁵ Although the SES Desk Guide is not a “policy-making guide,” OPM provides: “Where the terms ‘must’ or ‘shall/will’ or ‘should/would’ are used, the provisions reflect statutory or regulatory requirements or interpretations, or they are processing instructions.” SES Desk Guide 2016 at 2.

¹⁶ 2016 SES Desk Guide 5-9.

¹⁷ 5 C.F.R. § 430.306(b) and 5 C.F.R. § 430.304(b).

after the appraisal period began, and most plans were not signed by the executives and their supervisors until April 2018 or later - approximately 180 days after the performance period start date of October 1, 2017.

Additionally, we found that the executive who was denied a meaningful higher-level review of their FY 2017 performance review also did not receive any performance plan in FY 2018, and was without performance criteria for the entire FY 2018 appraisal period. As a consequence, this executive did not receive an appraisal for FY 2018 at all. The Administrator reassigned this executive to another GSA component more than six months into the FY 2018 appraisal period. Federal law requires that when, as here, an executive is reassigned after completing a minimal 90 day performance period, the rating official “must appraise the executive’s performance in writing ... before the executive leaves and provide this information to the executive.”¹⁸ The gaining supervisor “must consider this information when deriving the initial summary rating at the end of the appraisal period.” However, GSA did not provide the executive a performance plan in October 2017, at the beginning of the 2018 appraisal period. GSA also did not give the executive an interim, written appraisal for their FY 2018 performance before the executive’s reassignment to the other GSA office six months into the appraisal period.¹⁹

In addition, the executive did not receive a performance plan upon their reassignment to a position in the gaining component with different duties.²⁰ Rather than provide the executive an opportunity to succeed in the new position, GSA did not propose a performance plan until September 21, 2018, with nine days left in the performance year. That plan only addressed performance requirements for work in the gaining component, where the executive worked for less than half of the appraisal period. The executive declined to sign the proposed backdated, retroactive performance plan that only provided nine calendar days to achieve performance requirements.²¹ As a result, the agency did not give the executive the opportunity to receive an annual performance appraisal and demonstrate achievement in order to receive a performance based-pay adjustment or performance award. The SES Desk Guide provides that when an agency retains an executive in the SES after an unsatisfactory rating, the agency “must provide assistance in improving performance.”²² By failing to satisfy its fundamental obligation to

¹⁸ 5 CFR 430.310(b).

¹⁹ The executive provided a 9 page self-assessment of their performance for the appraisal period to date, for a June 15, 2018, mid-year review with the Administrator. The Administrator later canceled the review.

²⁰ 5 U.S.C. 4314(b)(3) (2020); 5 CFR 430.312(c) (2020).

²¹ Several months later, GSA again offered the executive an abbreviated 90-day FY 2018 performance plan for performance that would occur during the 2019 performance period. The executive also declined this retroactive plan.

²² 2016 SES Desk Guide 5-13.

establish performance standards and a performance plan, GSA failed to meet its responsibility to the executive.

PRB appointments not published in the Federal Register

GSA did not publish PRB appointments in the Federal Register for FY 2016 prior to Board members assessing executive performance.²³ Federal regulation requires that, “agencies must publish notice of PRB appointments in the Federal Register before service begins.”²⁴ The SES Desk Guide allows large agencies to establish a PRB roster with multi-year membership terms; however, GSA did not establish a multi-year PRB roster that would have permitted omission of the publishing requirement.

Executive improperly received two performance award payments and GSA provided misleading information to OPM

OHRM violated federal regulations by providing an executive with two performance award payments in FY 2018, instead of one lump sum award as required.²⁵ Additionally, OHRM provided misleading information to OPM when it reported the two payments for this executive as one lump sum payment.

During the FY 2018 PRB’s deliberations, PRB members recommended a conditional commendable, level 4, rating for an executive based on the executive’s performance package from OHRM. The recommendation included a footnote that if pending results were met or exceeded, the PRB would recommend changing the executive’s rating from commendable, level 4, rating to exceptional, level 5, rating. On December 19, 2018, the Administrator approved the PRB’s recommended commendable, level 4, rating, and the executive received a performance award of \$8,400 based on the Administrator’s rating, effective January 31, 2019.

On February 11, 2019, Alan Thomas, then Commissioner of the Federal Acquisition Service, notified OHRM that based on his review of new information the executive had achieved an exceptional, level 5, rating for FY 2018. Without additional consideration by the PRB or the Administrator, OHRM revised the executive’s rating to exceptional, level 5, based on Thomas’s notification. On March 18, 2019, the executive received approval for a second FY 2018 performance award of \$3,360.

²³ Our 2013 report found that GSA did not publish the PRB appointments in the Federal Register for five consecutive years (See JEF12-017-000, pages 7-8).

²⁴ 5 C.F.R. § 430.311 (a)(4).

²⁵ 5 C.F.R. § 534.405(b)(2)(f).

On May 8, 2019, OPM sent out a reminder to agencies to submit their FY 2018 SES Annual Data Call template. The reminder contained guidance that an explanatory comments section was to be used to explain any unique circumstances and anomalies affecting an executive's rating, pay, or awards data. The reminder also stated, "Inaccurate and incomplete submissions ... may impact timeliness in granting or eligibility for performance appraisal system certification." On June 14, 2019, OHRM submitted the FY 2018 Data Call and reported to OPM that on January 31, 2019, the executive received one award payment, for \$11,760. OHRM did not include any explanatory comments regarding the executive.

Federal regulation does not permit a second performance award for senior executives. 5 C.F.R. § 534.405 requires that performance awards must be paid in a lump sum.²⁶ By reporting the two awards paid to the executive (one approved in January and one in March) as one award, and failing to identify any unique circumstances or anomalies in its Data Call, OHRM provided an inaccurate report to OPM that withheld facts showing GSA violated this regulation.

Additionally, the SES Desk Guide states that the "annual summary rating cannot be changed based on additional information obtained after the annual summary rating is issued to the executive." By revising the final annual summary rating after the Administrator's approval and issuance of the rating to the executive, OHRM failed to comply with federal regulation.

OHRM improperly assigned PRB members to conduct higher-level reviews and provided guidance that conflicted with GSA policy

We also identified concerns regarding the higher-level review process that were not identified in the 2013 report. Specifically, OHRM officials allowed PRB members to conduct higher-level reviews of executives' initial summary ratings despite the prohibition under federal regulation. Federal regulation requires that "the review not be provided by a member of the PRB."²⁷ During the period FY 2016 through FY 2018, three executives requested higher-level reviews, and members of the PRB conducted the reviews for two of the three executives. By violating federal regulation and not providing appropriate higher-level reviewers, GSA failed to protect the rights of its executives.

²⁶ 5 C.F.R. § 534.405 provides an exception in instances when it is not possible to pay the full amount because of the applicable aggregate limitation on pay during a calendar year.

²⁷ 5 C.F.R. § 430.309(e)(2)(ii). The SES Desk Guide also states the "reviewer should not be a member of the PRB or an official who participated in determining the initial summary rating."

Additionally, we found that OHRM reduced the timeframe executives had to request a higher-level review to 3 days, contrary to GSA policy that allowed 15 days.²⁸ When asked about the reduction, then Chief Human Capital Officer Antonia Harris said she was unsure why OHRM's direction departed from the Order. Another OHRM official stated that the reduction in days was to promote efficiency in the PRB deliberative process. Harris said OHRM was drafting a new policy to ensure that their policy and guidance will not contradict each other.

Conclusion

GSA continued to violate legal requirements previously identified in our report, *GSA Practices for Executive Performance Recognition and Awards*, May 16, 2013, and did not adhere to internal policy and guidance.

We found multiple instances where GSA did not comply with federal regulations. In FY 2017, GSA did not provide an executive a meaningful opportunity for a higher-level review. For the FY 2016 to FY 2018 performance cycles, most executives did not receive performance plans on or before the beginning of the appraisal period. Many executives received performance plans more than 90 days after the beginning of the appraisal period, and one executive received no performance plan for FY 2018. In addition, GSA did not publish the PRB appointments in the Federal Register for FY 2016. OHRM officials also directed PRB members to conduct higher-level reviews despite prohibition of that practice by federal regulation. In FY 2018, contrary to instructions in the SES Desk Guide, GSA adjusted one executive's annual summary rating based on information obtained after issuance. This resulted in a second performance award payment to the executive, despite federal regulation permitting only a single lump sum payment. GSA also provided inaccurate information to OPM that portrayed these two performance awards as one. Finally, OHRM issued direction that conflicted with GSA policy by reducing the allotted time for executives to request higher-level reviews.

²⁸ GSA Order CPO P 9430.1 at Ch. 2.

Recommendations

The Chief Human Capital Officer, OHRM should:

1. Ensure initial summary ratings are issued after the rater has considered all applicable performance information so that executives have a meaningful opportunity for higher-level review.
2. Formalize the tracking of performance plans to ensure plans are issued to every executive and that the plans are provided before or at the start of a performance period in accordance with 5 C.F.R. § 430.306.
3. Ensure that each year a notice of PRB appointments is published in the Federal Register, or alternatively, the agency publishes a multi-year roster, in accordance with 5 C.F.R. § 430.311.
4. Ensure that assignments of higher-level reviewers conform with 5 C.F.R. § 430.309 and OPM guidance.
5. Ensure final summary ratings and performance awards comply with 5 C.F.R. § 534.405, OPM guidance, and GSA policy.
6. Notify OPM of the results of this review.

Objectives, Scope, and Methodology

On December 26, 2018, the Office of Inspections initiated an evaluation of management actions taken to address key issues and recommendations regarding executive performance evaluation practices identified in our May 16, 2013 report, *GSA Practices for Executive Performance Recognition and Awards*. We evaluated the executive performance management system for executive performance covered in fiscal years 2016, 2017, and 2018.

Our evaluation methodology included the following steps:

- Researched laws, rules, regulations, and other federal guidance on the SES performance plan and appraisal process;
- Reviewed relevant audits and inspections conducted by GSA OIG, Government Accountability Office, and other federal agencies;
- Interviewed agency management and staff from the Office of Administrative Services, Office of Human Resources Management, Public Buildings Service, and Federal Acquisition Service;
- Interviewed former GSA leadership;
- Reviewed email documentation from OHRM and other GSA officials; and
- Analyzed performance plans, initial summary ratings, final summary ratings, higher-level reviews, and awards.

This evaluation was conducted in accordance with the *Quality Standards for Inspection and Evaluation* (January 2012), issued by the Council of the Inspectors General on Integrity and Efficiency.

Appendix: Management Comments

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Office of Human Resources Management

June 4, 2020

MEMORANDUM FOR: PATRICIA D. SHEEHAN
ASSISTANT INSPECTOR GENERAL FOR INSPECTIONS
(JE)

FROM: MERRICK KRAUSE DocuSigned by:
Merrick Krause
ACTING CHIEF HUMAN CAPITAL OFFICER
OFFICE OF HUMAN RESOURCES MANAGEMENT (CS)

SUBJECT: Response to the Office of Inspector General's Draft Audit Report titled
*GSA'S Performance and Appraisal System for Senior Executives
Remains Deficient, Report Number JE18-012-000*

Thank you for the opportunity to review and comment on the subject audit report. We reviewed the report and agree with the findings and recommendations.

If you have any questions, please contact Jackie Clay, Acting Deputy Chief Human Capital Officer, at (202) 841-4480.

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