An hourglass graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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Report R40031

*Federal Employee Awards and Incentives: Title 5 Authorities
and Potential Issues for Congress*

Clinton T. Brass, Government and Finance Division

December 9, 2008

Abstract. Potential issues for Congress related to employee awards and incentives include questions of how to provide agencies with effective human resources management tools in light of agency missions and resource levels; how agencies are using these and other authorities to recruit, motivate, reward, and retain high-performing workforces; how to structure oversight and regulation of agency practices within the executive branch; and how to exercise congressional oversight over a civil service system that is increasingly fragmented (i.e., decentralized in execution and customized to individual agencies and workforces).

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Federal Employee Awards and Incentives: Title 5 Authorities and Potential Issues for Congress

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December 9, 2008

<http://wikileaks.org/wiki/CRS-R40031>

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CRS Report for Congress

Prepared for Members and Committees of Congress

Summary

Federal law establishes many authorities governing employee awards and incentives. The authorities generally have been established by Congress to provide agencies with tools to help them manage their workforces and, thereby, to better accomplish agency missions and public policy goals that cut across agency boundaries. Some of these authorities are contained within Title 5 of the *United States Code*, and cover most agencies in the executive branch and some in the legislative branch. These authorities are the subject of this report. Other statutory authorities may be unique in their coverage to a single agency, occupation type, or workforce, and are located in agency-specific “carve outs” in Title 5 or in other titles.

The term *award* refers to an agency payment that is used to reward an individual employee or group of employees for quality of past performance. By contrast, the term *incentive* refers to a payment that is designed to provide a monetary inducement for an individual (or group) to accept a new position or to remain employed in a current position.

Title 5 award authorities differ in their coverage and requirements among three general types of employees: federal employees generally; career Senior Executive Service (SES) employees; and political appointees. In turn, Title 5 incentive authorities come in three types: recruitment, relocation, and retention (also known as the “three Rs” or “3Rs”). Each incentive authority has the same statutory eligibility requirements. Payment of awards and incentives may be subject to statutory limitations on aggregate compensation.

Potential issues for Congress related to employee awards and incentives include questions of how to provide agencies with effective human resources management tools in light of agency missions and resource levels; how agencies are using these and other authorities to recruit, motivate, reward, and retain high-performing workforces; how to structure oversight and regulation of agency practices within the executive branch; and how to exercise congressional oversight over a civil service system that is increasingly fragmented (i.e., decentralized in execution and customized to individual agencies and workforces).

This report will be updated to reflect changes in authorities or emerging issues.

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Federal law establishes many personnel authorities governing employee awards and incentives. The statutory authorities generally have been established by Congress to provide agencies with tools to help them manage their workforces and, thereby, to better accomplish individual agency missions as well as public policy goals that cut across agency boundaries. Some of these authorities are contained within Title 5 of the *United States Code* (hereafter “Title 5”). These authorities cover most agencies in the executive branch and some in the legislative branch.¹ Other authorities may be unique in their coverage to a single agency, occupation type, or workforce, and may be located in agency-specific “carve outs” in Title 5 or in other titles.² Many of the statutory authorities, if not most, are prescribed for agencies in great detail. This report discusses statutory authorities for federal employee awards and incentives under executive-branch-wide provisions of Title 5, corresponding data sources and employee perceptions from the Federal Human Capital Survey, and potential issues for Congress. The report does not include discussion of awards or incentives authorized under agency- or workforce-specific statutory authorities.

In all cases, award and incentive payments may be constrained by statutory limitations on an employee’s aggregate compensation in a calendar year, sometimes called “salary caps.” The relevant cap is determined, in part, by the pay system that applies to the position to which an employee was appointed.³ In addition, awards and incentive payments generally are designated by statute and regulation as not being part of an employee’s basic pay. Therefore, they do not count for calculation of a federal employee’s retirement annuity.

The advent of “pay for performance” for some agencies and workforces has, to some extent, blurred the distinction between pay, on one hand, and awards and incentives, on the other. The term pay for performance typically refers to the linkage of performance appraisals to salaried pay.⁴ This blurring arguably raises the possibility that a discrete analysis of awards and incentives only, separate from pay, may provide only a partial picture.⁵ With this caveat noted, this report nonetheless focuses on awards and incentives.

Because awards and incentives have different purposes and requirements, the report discusses each topic separately. Terminology associated with award and incentive authorities sometimes may cause confusion, because separate and distinct technical terms have been introduced that, in common usage, often tend to be synonyms. Therefore, the report begins with a brief discussion of terms.

¹ For discussion, see “Title 5: The Federal Civil Service,” by Barbara L. Schwemle, in CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al.

² For example, the Federal Emergency Management Agency (FEMA) and the Federal Bureau of Investigation (FBI) have their own agency-specific authorities for recruitment incentives (FEMA, 5 U.S.C. §§ 10104-10105) and retention and relocation incentives (FBI, 5 U.S.C. § 5759).

³ For discussion, see CRS Report RL33245, *Legislative, Executive, and Judicial Officials: Process for Adjusting Pay and Current Salaries*, by Barbara L. Schwemle.

⁴ For an overview of pay for performance, see CRS Report RL34529, *Pay-for-Performance: Linking Employee Pay to Performance Appraisal*, by Wendy R. Ginsberg.

⁵ Technically, pay for performance is not an award. However, the advent of pay for performance allows the basic pay of employees to be adjusted upward based on the performance ratings that are given. Actions like this generally may not be taken in pay systems that do not feature pay for performance. Absent pay for performance, agencies instead have tended to rely on awards to reward performance and on incentives to influence behaviors like recruitment, relocation, and retention. Therefore, any implementation of a pay for performance system may influence agency and employee behaviors with regard to any award and incentive programs, and vice versa.

Overview of Terms

This report uses specific terms in order to achieve consistency with current usage by the Office of Personnel Management (OPM).⁶ In the report, the term *award* refers to an agency payment that is used to reward an individual employee or group of employees for quality of past performance.⁷ Awards are distinct from *pay*, a term that refers to salaries and wages that federal employees receive for work performed.⁸ Title 5 award authorities differ in their coverage and requirements among three general types of employees: federal employees generally; career Senior Executive Service (SES) employees; and political appointees.

By contrast, the term *incentive* refers to a payment that is designed to provide a monetary inducement for an individual (or a group) to accept a new position or to remain employed in a current position. Title 5 incentive authorities come in three types: recruitment, relocation, and retention (also known as “the three Rs” or “3Rs”).⁹ Unlike awards, the three incentive authorities do not differ from each other in terms of the employees they cover. The next two sections of this report discuss each topic, in turn.

Awards

Types of Employees

Federal executive branch employees can be characterized as belonging to multiple, related, but often differing workforces. Laws, regulations, executive orders, and administrative policies determine how employees in the distinct workforces are variously appointed (hired), appraised, compensated, and managed. The authorities that apply to these separate workforces can be identical, similar, or substantially different from each other. Authorities about employee awards, for example, differ among segments of the federal workforce. Some authorities also provide flexibility to specific agencies to customize their practices, while still operating within broad requirements.¹⁰ Due to the underlying diversity of workforces among and within agencies, this report simplifies the analysis by discussing three major types of federal employees for purposes of employee awards, which are not mutually exclusive in all cases:

⁶ Terminology related to awards, incentives, bonuses, etc., can be confusing, because colloquial use of terms may vary considerably. Under Title 5, separate and distinct terms have been introduced that often tend to be synonyms in common usage. Perhaps as a consequence, OPM gradually has been revising its own usage of terms in regulations and reports to clarify meanings to nonspecialists. To reduce potential confusion, this report seeks consistency with OPM usage, while noting technical terms and definitions. For an example of OPM discussing these terminology issues, see U.S. Office of Personnel Management (hereafter “OPM”), *Recruitment, Relocation, and Retention Incentives, Calendar Year 2007: Report to the Congress*, SHRP/CPLA-6, Washington, DC, September 2008 (hereafter *Calendar Year 2007 3Rs Report*), p. 4, <http://www.opm.gov/oca/pay/html/3rsReporttoCongress-index.asp>.

⁷ Chapter 45 of Title 5 refers to these awards as falling within a broader category of “incentive awards.”

⁸ For discussion of components of white-collar salaries, including basic and locality pay, see CRS Report RL34463, *Federal White-Collar Pay: FY2009 Salary Adjustments*, by Barbara L. Schwemle.

⁹ Chapter 57 of Title 5 refers to these incentives as “bonuses.” In keeping with OPM practice, this report uses the term “incentive” in place of “bonus” to differentiate these kinds of payments according to their underlying purposes. See U.S. OPM, *Calendar Year 2007 3Rs Report*, p. 4.

¹⁰ For example, some authorities require more specific regulation or allow administrative practice to be established without regulations.

- federal employees generally, except those who are subject to certain “carve-out” authorities;¹¹
- career SES employees;¹² and
- political employees, who have had statutory or policy restrictions on their ability to receive awards.¹³

Some federal employees may fall outside these three categories for purposes of awards. For example, some positions are “excepted” by law from the government-wide appointment provisions of Title 5.¹⁴ These employees may be subject to different laws about awards (e.g., some in the Federal Aviation Administration, 49 U.S.C. § 106) or award-like “performance pay” amounts (e.g., Senior Foreign Service, 22 U.S.C. § 3965) instead of, or in addition to, those of Title 5. Some special categories of employees are eligible for awards (e.g., “award to law enforcement officers for foreign language capabilities,” 5 U.S.C. §§ 4521-4523). As noted earlier, this report focuses on executive-branch-wide authorities and does not address these kinds of agency- or occupation-specific authorities.

Authorities and Data Sources

For each of the three employee types enumerated above, two subjects related to awards are discussed below: (1) statutory and other authorities and (2) major data sources about how awards have been given. Data sources may provide not only numbers and rates of awards granted, but also employee perceptions about how awards are granted, as revealed through survey results.

Federal Employees Generally

Authorities

The most broadly available cash awards for federal employees are those enumerated in Chapter 45, Subchapter I, of Title 5 (5 U.S.C. §§ 4501-4509) and in implementing regulations at 5 C.F.R. Part 451. The subchapter authorizes distinct types of awards that may be granted to an “employee,” as that term is defined at 5 U.S.C. § 4501(2). Employees in executive agencies and

¹¹ For the Title 5 definition of “employee,” see 5 U.S.C. § 2105. For the definition of “employee” for purposes of executive-branch-wide award authorities discussed in this report, see 5 U.S.C. § 4501. In this context, the metaphor of a “carve-out” oftentimes refers to a situation when statutory provisions outside of Title 5 apply to an employee instead of the Title 5 provisions. Other times, the “carve-out” metaphor may refer to a situation when agency- or workforce-specific provisions inside Title 5 are used instead of more general Title 5 provisions that cover many agencies.

¹² The SES “consists of Senior Executive Service positions” (5 U.S.C. § 2101a). A “Senior Executive Service position” is defined in 5 U.S.C. § 3132(a)(2).

¹³ The term “political employee” sometimes is used as a colloquial expression that refers to several sub-types of employees. For examples of statutory use of the term, however, see 5 U.S.C. § 9803 and 49 U.S.C. § 106. See also 5 U.S.C. § 4508(a)(2) for use of the term “senior politically appointed officer.” Political appointees sometimes are referred to as “appointed” or “noncareer” employees. For discussion of some types of political appointees, see CRS Report RL34706, *Federal Personnel: Conversion of Employees from Appointed (Noncareer) Positions to Career Positions in the Executive Branch*, by Barbara L. Schwemle.

¹⁴ These employees are in the “excepted service,” which is defined at 5 U.S.C. § 2103. Although this report does not cover these separate statutory and administrative award authorities, the report’s last section discusses potential issues for Congress related to transparency and accountability amid the diversity of federal workforces and corresponding authorities.

some legislative branch agencies may receive awards.¹⁵ Awards may be granted by the head of an agency (“agency award,” 5 U.S.C. § 4503; 5 C.F.R. § 451.101) and by the President (“presidential award,” 5 U.S.C. § 4504; 5 C.F.R. § 451.201; see also Executive Order 10717, as amended), as well as to former employees (5 U.S.C. § 4505). Awards also may be granted to employees based on their performance appraisals (“performance-based cash awards,” 5 U.S.C. § 4505a; 5 C.F.R. § 451.101). Groups of employees also may receive awards. OPM has authority, by regulation, to permit agencies to grant employees time off from duty without loss of pay or charge to leave (5 U.S.C. § 4502(e)). These statutory authorities grant agencies considerable discretion to design and implement their award programs, and implementing regulations allow agencies to customize their award programs, to suit agency circumstances (5 C.F.R. § 451.103).

In general, each of these Subchapter I cash awards may not exceed \$10,000, unless the head of an agency certifies to OPM that the award is based on conduct that is “highly exceptional and unusually outstanding.” In that case, a cash award may, with OPM’s approval, be in excess of \$10,000, but not in excess of \$25,000 (5 U.S.C. § 4502).¹⁶ Performance-based cash awards are available to employees paid under the General Schedule (GS) and non-GS employees covered by Chapter 45 whose most recent performance rating was at the “fully successful” level or higher, or the equivalent thereof (5 U.S.C. § 4505a(d); 5 C.F.R. § 451.101(e)).¹⁷ However, at the request of the head of an executive agency, the Director of OPM may authorize the payment of performance-based cash awards to “any category of employees within such agency” who otherwise would not be covered by 5 U.S.C. § 4505a (5 U.S.C. § 4505a(d) and § 4505a(e)).¹⁸ Performance-based cash awards may not be more than 10% of an employee’s annual rate of basic pay, unless performance is so exceptional that an agency head specifically authorizes a cash award exceeding 10%, but not exceeding 20%, of the employee’s annual rate of basic pay (5 U.S.C. § 4505a(a)(2)).

Chapter 45, Subchapter II separately provides for two types of “cost savings disclosure” awards (5 U.S.C. §§ 4511-4513).¹⁹ One type of award may be granted by an agency’s inspector general to any agency employee “whose disclosure of fraud, waste, or mismanagement” to the IG “has resulted in cost savings for the agency” (“agency award,” 5 U.S.C. § 4512).²⁰ This type of agency award may not exceed the lesser of \$10,000 or an amount equal to 1% of the total savings attributable to the employee’s disclosure, as determined by the IG. The second type of disclosure award may be granted by the President (“presidential award,” 5 U.S.C. § 4513). The President may pay a cash award in the amount of \$20,000 to any employee “whose disclosure of fraud, waste, or mismanagement has resulted in substantial cost savings for the Government,” taking into account cost savings projected for subsequent fiscal years that will be attributable to the

¹⁵ Congress included within the definition of “agency” for Subchapter I several legislative branch agencies, including the Library of Congress, Office of the Architect of the Capitol; Botanic Garden; and Government Printing Office. Therefore, employees of these agencies who are “employees” under Subchapter I would be eligible for these awards, unless otherwise restricted.

¹⁶ The Secretary of Defense is not subject to these certification and approval requirements (5 U.S.C. § 4502(f)).

¹⁷ The GS pay system is divided into 15 grades of difficulty and responsibility of work. Employees progress across 10 steps in each grade via longevity and at least an acceptable level of competence.

¹⁸ Authority delegated under Executive Order 13415, December 1, 2006 (71 *Federal Register* 70641).

¹⁹ In contrast with Chapter 45, Subchapter I awards, Subchapter II awards may be given only to employees in executive agencies and not several legislative branch agencies that were included within the definition of “agency” for Subchapter I.

²⁰ In the case of an agency for which there is no IG, the agency’s head is required to designate another employee to perform these functions.

disclosure. The President is prohibited from making more than 50 such awards during any fiscal year.

Separately from Chapter 45 of Title 5, the head of an agency also may grant a one-step increase to basic pay to recognize GS employees “in recognition of high quality performance above that ordinarily found in the type of position concerned” (“quality step increase” or QSI, 5 U.S.C. § 5336; 5 C.F.R. § 531.501). A QSI may be granted only to an employee who receives a rating of record at the highest summary level used by a performance appraisal program, and may not be granted to an employee who already received a QSI within the preceding 52 weeks. A QSI increases an employee’s basic pay. For a senior career employee in a Senior-Level (SL) or Scientific-Professional (ST) position that is classified above GS-15, paid under 5 U.S.C. § 5376, and also subject to OPM allocations under 5 C.F.R. Part 319, certain “rank awards” may be granted (5 U.S.C. § 4507a; 5 C.F.R. § 451.302). These rank awards are granted in amounts equal to either 20% or 35% of annual basic pay (see discussion under the heading “Senior Executive Service,” later in this report).

Data Sources

Under Executive Order 13197, OPM has responsibility for the collection and maintenance of information on the executive branch workforce in order to “ensure that merit system principles are applied consistently across the Federal Government and that the Executive branch has the ability to collect information about its workforce.”²¹ OPM receives data from agencies about most of the federal civilian workforce and maintains much of the data in electronic databases, including the Central Personnel Data File (CPDF).²² However, as is the case with most large sources of data in the public and private sectors, the resources that are available for easily extracting and presenting data can be limited. For example, some information from the CPDF is available in an online database that is administered by OPM.²³ CPDF data about awards, however, appear to be available only from (1) special runs on the CPDF performed by OPM or other entities that have a copy of the CPDF or (2) publications issued by OPM. In addition, in light of current methods of recording and reporting data and existing information technology infrastructure, the accuracy of some data in these databases cannot be guaranteed.²⁴ Otherwise, Members and committees of Congress have sometimes relied for access to this information on direct requests of agencies or field studies by the Government Accountability Office (GAO).²⁵ That said, some long-term efforts are underway to, among other things, make agency workforce data more accessible.²⁶

²¹ Executive Order 13197, “Governmentwide Accountability for Merit System Principles; Workforce Information,” 66 *Federal Register* 7851, January 25, 2001.

²² OPM posts statistics and some reports that draw on the CPDF at <http://www.opm.gov/feddata/>.

²³ See OPM’s “FedScope” database, which allows some online analysis of some CPDF data, <http://www.fedscope.opm.gov/index.asp>.

²⁴ For example, see U.S. OPM, Office of Workforce Information, *Comparison of Central Personnel Data File and Official Personnel Folder Records: Fiscal Year 1994*, July 1996, <http://www.opm.gov/feddata/html/accs.asp>.

²⁵ For an example of a congressional investigation that took place in 2007-2008 regarding U.S. Food and Drug Administration (FDA) awards and incentives, see U.S. Congress, House Committee on Energy and Commerce, “FDA Compensation Practices,” <http://energycommerce.house.gov/Investigations/FDACompensationPractices.shtml>.

²⁶ The Office of Management and Budget (OMB) and OPM have pursued an “E-Gov” initiative (information technology project that cuts across agency boundaries) called Enterprise Human Resources Integration (EHRI) with a goal to establish a “central data repository [that] will provide comprehensive knowledge management[,] workforce (continued...)”

Perhaps in light of these technology and resource challenges, OPM occasionally has produced reports on federal civilian workforce statistics using the CPDF and other sources. The latest and most prominent of these reports for purposes of employee awards presents aggregate information about most federal civilian employees for FY2001-FY2004, but not agency-specific information.²⁷ OPM reported that in 2004, over 1.2 million individual cash awards were granted (perhaps in some cases more than one award per employee), totaling \$1.1 billion, or 1.01% of total salaries.²⁸ As a percentage of salaries, awards have been relatively stable in the reported years. In practice, awards to individual employees tend to be considerably larger in number and dollar amount, in the aggregate, than awards to groups. Group cash awards amounted to about 0.11% of total salaries in FY2004. The *Fact Book* does not report on the percentage of employees who received awards, but a 2004 newspaper article reported that the figure was 62% for FY2002.²⁹

Employee Perceptions from FHCS

Another perspective on employee awards may be gained from results of the Federal Human Capital Survey (FHCS), which has been administered by OPM in 2002, 2004, and 2006.³⁰ The 2006 survey's item number 28 asked respondents to agree or disagree with the statement "Awards in my work unit depend on how well employees perform in their jobs." A total of 39.8% of federal employees agreed or strongly agreed.³¹ This 2006 result represented a continuation of a declining trend of employees agreeing or strongly agreeing from 2002 (46.3%) and 2004 (41.7%). Employee responses broken out by agency and certain demographic categories also are available from the survey.³² Broken out by pay category, the percentages of employees agreeing or strongly agreeing in 2006 with item 28's statement are shown in **Table 1**.

(...continued)

analysis, forecasting, and reporting across the Executive Branch for the strategic management of human capital." For more information, see <http://www.whitehouse.gov/omb/egov/c-4-3-ehri.html>.

²⁷ U.S. Office of Personnel Management, *Federal Civilian Workforce Statistics, The Fact Book, 2005 Edition*, February 2006, available at <http://www.opm.gov/feddata/factbook/index.asp>.

²⁸ *Ibid.*, p. 67. This figure included some awards to members of the SES, but not SES performance or rank awards, which are discussed later.

²⁹ Christopher Lee and Hal Straus, "Two-Thirds of Federal Workers Get a Bonus," *Washington Post*, May 17, 2004, p. A1.

³⁰ U.S. OPM, "Federal Human Capital Survey 2006," <http://www.fhcs2006.opm.gov/>. The overall response rate to the 2006 survey was 57%. OPM has said it used "weighted data" and "designed the survey to produce valid results representing Governmentwide Federal employees as well as employees in individual Federal agencies and subagencies." See <http://www.fhcs2006.opm.gov/What/>.

³¹ Response to item #28, in U.S. OPM, *Federal Human Capital Survey 2006: Results from the 2006 Federal Human Capital Survey*, p. 51, available at http://www.fhcs2006.opm.gov/Published/FHCS_2006_Report.pdf.

³² Categories of demographic data in the 2006 survey included work location, supervisor status, sex, race, Hispanic status, age group, pay category, time in federal government, time with current agency, intention to leave the agency, and intention to retire. However, agency-level weighted data that are broken out by demographic variables are not available.

Table 1. FHCS 2006: Percent of Employees Agreeing That “Awards In My Work Unit Depend on How Well Employees Perform in Their Jobs”

Pay Category	Percent of Employees Agreeing That Awards in Work Unit Depend on Job Performance
Federal wage system	31.5%
GS 1-6 or equivalent	37.1%
GS 7-12 or equivalent	37.5%
GS 13-15 or equivalent	48.7%
SES	75.7%
Senior Level (SL); Scientific or Professional (ST)	30.0%
Other	38.0%

Source: U.S. OPM, *Federal Human Capital Survey 2006: Results from the 2006 Federal Human Capital Survey, FHCS Report by Demographics*, p. 55 (as paginated within PDF document), available at http://www.fhcs2006.opm.gov/Published/FHCS_2006_Demo_Part2.pdf.

Career Senior Executive Service (SES)

Authorities

Career senior executive employees may receive Presidential Rank Awards (5 U.S.C. § 4507; 5 C.F.R. § 451.301), SES performance awards (5 U.S.C. § 5384; 5 C.F.R. § 534.405), and certain other types of awards. Limited term, limited emergency, and noncareer senior executives,³³ who are political appointees (5 U.S.C. § 4508(a)(2)) and constitute a minority of SES employees, are not eligible for Presidential Rank Awards or SES performance awards. Any senior executive may receive a cash award under 5 U.S.C. § 4503 and § 4504, subject to the \$10,000 limit (with exceptions) noted earlier for federal employees, generally. SES employees also may receive Chapter 45, Subchapter II awards (i.e., cost savings disclosure awards).³⁴

For Presidential Rank Awards, an executive with the rank of Meritorious Executive (“for sustained accomplishment”) receives a payment of 20% of annual basic pay. For the rank of Distinguished Executive (“for sustained extraordinary accomplishment”), the payment is 35%. The payment percentage is multiplied by an SES member’s basic pay, which, in turn, is determined in part by whether the SES appraisal system at an agency has been certified by OPM. For 2008, bands for SES basic pay were established at \$114,468-\$158,500 for an uncertified system and \$114,468-\$172,200 for a certified system.³⁵ Therefore, rank awards could be between

³³ For definitions of these terms, see 5 U.S.C. § 3132(a).

³⁴ A pay for performance system for the SES was established in 2004 by Section 1125 of the FY2004 National Defense Authorization Act (P.L. 108-136). Both career and politically appointed SES employees may receive upward adjustments in their basic pay under the SES pay for performance system (Title 5, Chapter 53, Subchapter VIII; 5 C.F.R. § 534.401), unless an employee receives a summary rating of less than “fully successful” (5 C.F.R. § 534.404(b)(5)). Although these adjustments technically are not awards, it is possible that adjustments could be used to fulfill the same purposes as awards. For analysis of SES pay issues, see CRS Report RL33128, *Senior Executive Service (SES) Pay for Performance System*, by L. Elaine Halchin.

³⁵ To see these and previous SES pay bands, see CRS Report RL33245, *Legislative, Executive, and Judicial Officials: Process for Adjusting Pay and Current Salaries*, by Barbara L. Schwemle.

\$22,894 (20% of the lower bound) and \$55,475 (35% of the upper bound) in an agency with an uncertified appraisal system, and between \$22,894 (20% of lower bound) and \$60,270 (35% of upper bound) in an agency with a certified system (figures rounded by CRS). In a given year, the percentage of career executives who may receive the Meritorious and Distinguished Rank Awards may not exceed 5% and 1%, respectively, of the total career SES membership (6,308 in 2007). Individuals awarded a Presidential Rank Award are ineligible to receive another such reward during the following four fiscal years. As noted earlier, senior career employees who are not in the SES (i.e., who are in SL and ST positions) separately may receive rank awards (5 U.S.C. § 4507a; 5 C.F.R. § 451.302). SL and ST positions generally are subject to the same terms and conditions as career SES positions for purposes of rank awards.

Career senior executives whose performance is rated at least “fully successful” may receive performance awards. An agency head determines the amount of the award, which must be between 5% and 20% of the executive’s rate of basic pay. The aggregate amount of performance awards that an agency may pay during a fiscal year is capped, based on a calculation of aggregated pay during the preceding fiscal year. The cap is set at the greater of either 10% of the “aggregate amount of basic pay paid to career appointees,” or 20% of the “average of the annual rates of basic pay paid to career appointees.”

Data Sources

OPM has published annual reports for several years containing aggregated and agency-level data about pay and awards for SES employees. However, the OPM data do not report on awards for politically appointed SES employees. Data also are not included about awards granted under Title 5, Chapter 45, Subchapters I and II.³⁶ OPM’s report for FY2007 provided aggregate and agency-specific data on awards to career SES employees from FY2004-FY2007.³⁷ For example, OPM provided information about the salaries of career, noncareer, and limited term SES employees for FY2006 and FY2007, comparing agency and government-wide averages. For FY2007, the government-wide average rate of basic pay, after salary adjustment under pay for performance, was \$158,865. OPM provided information about awards for career SES employees for FY2004-FY2007. For FY2007, 74.5% of career SES employees received awards, with an average award of \$14,221, or nearly 9% of average basic pay for all SES employees (\$158,865, after salary adjustment). Similar agency-level figures are included in OPM’s report.

Employee Perceptions from FHCS

As noted earlier, the 2006 FHCS reported that 75.7% of SES employees agreed or strongly agreed with the statement “Awards in my work unit depend on how well employees perform in their jobs.” A non-scientific survey conducted in 2006 by the Senior Executives Association (SEA) regarding the then-new SES pay system, however, raised questions about some aspects of SES

³⁶ For rank award information, see <http://www.opm.gov/SES/performance/presrankawards.asp>.

³⁷ U.S. OPM, *Report on Senior Executive Pay for Performance for Fiscal Year 2007*, July 2008, HCLMSA-2008-008, attachment to U.S. OPM, memorandum from Linda M. Springer, Director, “Report on Senior Executive Pay for Performance for Fiscal Year 2007,” July 22, 2008, <http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=1443>. Previous reports are available at http://www.opm.gov/ses/facts_and_figures/data_trends06.asp (FY2006); <http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=752> (FY2005); and <http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=588> (FY2004).

pay and awards.³⁸ The SEA survey received considerable attention in a September 2006 Senate hearing.³⁹ OPM conducted its own non-scientific survey of SES employees in early 2008, with a considerably higher response rate compared to the SEA survey. The OPM 2008 survey covered several topics, including a “particular emphasis on the impact of the still relatively new SES pay for performance system.”⁴⁰ In response to the statement “My performance appraisal is a fair reflection of my performance,” 67.9% of respondents agreed or strongly agreed.⁴¹ Another question linked perceptions of performance appraisals to awards. In response to the question “To what extent is your bonus linked to your performance rating?”, 71.5% of respondents said “great extent” or “very great extent.”⁴² Only 32.3% of respondents, however, agreed or strongly agreed with the statement “Bonus amounts are meaningfully different among executives.” In addition, 43.4% of respondents agreed or strongly agreed with the statement “In my agency, SES pay for performance promotes better organizational performance,” while 25.2% disagreed or strongly disagreed, and 31.5% neither agreed nor disagreed. The OPM 2008 survey also provided agency-specific data that exhibited considerable variation in responses among agencies.

Politically Appointed Employees

Authorities

Political appointees constitute a third group of federal employees who may receive awards. Major subgroups of politically appointed employees include

- “Schedule C” employees (excepted service employees occupying “positions of a confidential or policy-determining nature”; see 5 C.F.R. § 213.3302);
- SES employees other than career SES employees; and
- presidential appointees subject to Senate confirmation (“PAS” officers) who are paid according to the Executive Schedule (EX; Chapter 53, Subchapter II, of Title 5).

Congress has treated political appointees differently from career employees in many respects, especially restricting them from receiving certain types of awards. For example, Congress

³⁸ Senior Executives Association and Avue Technologies Corp., *Survey of the Senior Executive Service Pay and Performance Management System: Lost in Translation*, 2006, http://www.seniorexecs.org/fileadmin/user_upload/SEA_Mainstays/SEA_Avue_Pay_For_Performance_Survey_Results_Report.pdf. The survey generated 830 responses from 6,837 career and politically appointed members of the SES (12% response rate), according to the SEA, that were described as similar in demographics to the SES population. However, because responses were based on self-selection rather than another sampling methodology (e.g., random sampling), results may not be representative of the broader population.

³⁹ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on the Oversight of Government Management, the Federal Workforce, and the District of Columbia, *Senior Executives: Leading the Way in Federal Workforce Reforms*, hearing, 109th Cong., 2nd sess., September 26, 2006, S.Hrg. 109-794 (Washington: GPO, 2007).

⁴⁰ U.S. OPM, *Senior Executive Service: Survey Results*, May 2008, “A Message from the Director” (p. 2 of PDF file), http://www.opm.gov/ses/SES_survey_results_complete.pdf. The survey generated 4,386 responses from 6,745 career and politically appointed members of the SES (65% response rate), according to OPM. However, because responses were based on self-selection rather than another sampling methodology and responses were not adjusted for self-selection, results may not be representative of the broader population.

⁴¹ *Ibid.*, p. 2.

⁴² *Ibid.*

established limitations on awards for some political appointees during presidential election years (5 U.S.C. § 4508; 5 C.F.R. § 451.105). Under these restrictions, a “senior politically appointed officer,” defined as an officer who serves in a Schedule C position or an SES position other than a career position, may not receive an award under Title 5’s Chapter 45, Subchapter I during a “Presidential election period,” from June 1 in a presidential election year (e.g., June 1, 2008) until January 20 of the following calendar year, after the election (e.g., January 20, 2009).⁴³ In March 2008, OPM issued a memorandum to the heads of agencies recapitulating these and other restrictions.⁴⁴ Under another provision (5 U.S.C. § 4509; 5 C.F.R. § 451.105), Congress prohibited cash awards under Chapter 45, Subchapter I’s authorities from being given at any time to PAS officers in positions listed in the Executive Schedule and positions for which pay is set in statute by reference to a section or level of the Executive Schedule.⁴⁵

Nevertheless, some political appointees legally may receive awards under some of the authorities under Subchapters I and II of Chapter 45, Title 5. For example, Schedule C and politically appointed SES employees may be granted agency and presidential awards (5 U.S.C. §§ 4503-4504) at times other than during presidential election periods.⁴⁶ Schedule C employees paid under the General Schedule also may receive performance-based cash awards (5 U.S.C. § 4505a) at times other than during presidential election periods. Subchapter II “cost savings disclosure” awards would be available to be granted to any type of political appointee, even during presidential election periods.

Additional restrictions on awards for political appointees were imposed and rescinded administratively by the chiefs of staff of two Presidents in 1994 and 2002.⁴⁷ During the Administration of President William Jefferson Clinton, likely in August 1994, White House Chief of Staff Leon E. Panetta issued a memorandum to the Cabinet and agency heads regarding, among other things, the granting of lump-sum cash awards to “political appointees at all levels.”⁴⁸

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 such 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 rewards to

⁴³ Title 5 defines “officer” at 5 U.S.C. § 2104, as distinct from “employee” at 5 U.S.C. § 2105.

⁴⁴ U.S. OPM, memorandum from Linda M. Springer, Director, “Appointments and Awards During the 2008 Presidential Election Period,” March 17, 2008, attachment 1, p. 2, <http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=890>.

⁴⁵ The Executive Schedule is the pay schedule for most PAS positions, consisting of five levels indicated by Roman numerals I through V, with I being the highest (5 U.S.C. §§ 5311-5318).

⁴⁶ Politically appointed SES employees also may receive salary adjustments under the SES pay for performance system, which technically are not awards, as noted earlier.

⁴⁷ For more information, see <http://www.opm.gov/transition/TRANS20R-AppE.htm> (about the restrictions imposed in 1994); and Christopher Lee and Mike Allen, “Appointees’ Bonuses Stir Anger,” *Washington Post*, December 5, 2002, p. A33 (about the 2002 revocation of the restrictions).

⁴⁸ U.S. President William Jefferson Clinton, White House, memorandum from Leon E. Panetta, Chief of Staff, “Promotions and Cash Awards for Political Appointees,” undated (obtained by CRS from OPM, staff of which believe the memorandum was issued in 1994), available on request from CRS. An OPM Web page created for the 2000 presidential transition makes reference to the Panetta memorandum as being issued in August 1994 and remaining in effect through January 20, 2001. See item #28 on Web page entitled “Appendix E: Additional Questions and Answers About the Senior Executive Service,” <http://www.opm.gov/transition/TRANS20R-AppE.htm>.

others only for performance that is clearly exceptional. Agencies should continue to recognize other political appointees through the prudent use of nonmonetary awards.

On March 29, 2002, during the Administration of President George W. Bush, White House Chief of Staff Andrew H. Card, Jr., issued a memorandum for Cabinet members and agency heads “to clarify that political appointees are eligible for performance based awards.”⁴⁹ The memorandum effectively rescinded the Clinton Administration policy and again allowed awards to be given to political appointees under Title 5 provisions:

All awards must be based on substantial work achievements that go well beyond the performance of routine duties. Political appointees should be judged and rewarded in the same manner as career employees. Due to the sensitivity of this parity issue, I ask you to personally review any awards proposed for political appointees.

The memorandum outlined “basic eligibility” criteria, including that Schedule C employees are eligible for performance-based cash awards and “other awards in the form of cash, time off, or nonmonetary items to recognize contributions to Government economy, efficiency, or effectiveness.” The memorandum also noted that “[n]oncareer SES employees are eligible for awards based on contributions to Government economy, efficiency, or effectiveness, but are not eligible for SES performance bonuses.” Finally, the memorandum stated that QSIs can be used to reward political appointees, if an employee receives the highest performance rating that an agency uses and meets “any other criteria set by your agency.” The Card memorandum reportedly was not disclosed until a media report several months later.⁵⁰ Some agencies subsequently posted policies for political appointee awards online,⁵¹ including an online version of a document that indicated OPM had begun developing guidance on the subject as early as February 2002, pursuant to a White House request.⁵²

Data Sources

OPM reports on awards have, in the main, tended not to provide separate information about political appointees. However, OPM has responded to specific congressional requests. For example, in 2002 and 2003, Representative Steny H. Hoyer requested from OPM data on cash awards granted to political appointees. Representative Hoyer subsequently released “a report by [OPM]” on the subject, which was generated from CPDF data.⁵³

⁴⁹ U.S. President George W. Bush, White House, memorandum from Andrew H. Card, Jr., Chief of Staff, “Awards for Political Appointees,” March 29, 2002 (obtained by CRS from OPM), available on request from CRS.

⁵⁰ Eric Lichtblau, “Bush Restoring Cash Bonuses for Appointees,” *New York Times*, December 4, 2002, p. A1.

⁵¹ For example, see U.S. Department of Justice, memorandum from Robert F. Diegelman, Acting Assistant Attorney General for Administration, “Award Policy for Noncareer Senior Executive Service (SES) and Schedule C Employees,” September 11, 2002, <http://www.usdoj.gov/jmd/ps/memawardsessschc.htm>; and U.S. Department of Agriculture, Office of the Secretary, memorandum from Chief of Staff [Dale W. Moore, signature], “USDA Policy – Awards for Political Appointees,” February 28, 2003, available at <http://www.afm.ars.usda.gov/hrd/awards/files/political-appointees.pdf>.

⁵² U.S. OPM, memorandum from Kay Coles James, Director, “Cash Awards for Political Appointees,” February 7, 2002, attached to U.S. Department of Justice, memorandum from Ana A. Mazzi, Acting Director, Personnel Staff, “Cash Awards for Political Appointees,” March 8, 2002, available at <http://www.usdoj.gov/jmd/ps/memawdpolapp.html>.

⁵³ U.S. Congress, Rep. Steny H. Hoyer, “Hoyer Releases Report on White House Political Appointee Bonuses,” press release, July 10, 2003, http://www.majorityleader.gov/in_the_news/press_releases/index.cfm?pressReleaseID=183. Rep. Hoyer and Rep. Tom Davis subsequently provided to CRS copies of related letters and reports from OPM so that (continued...)

OPM generally has not broken out award data separately for politically appointed SES employees in the agency's reports on SES pay for performance.⁵⁴ Some data concerning performance ratings of political appointees, however, may be derived from OPM reports. These data show disparities between politically appointed and career SES employees in terms of the percentage of employees receiving the highest level performance ratings. Performance ratings for career SES employees tend to correlate strongly with the magnitude of awards. This tendency suggests the possibility that the performance ratings of politically appointed SES employees may have implications for the overall extent of their award levels in comparison with career employees, as discussed below.

Performance appraisal ratings of career SES employees, politically appointed SES employees, and overall SES employees are displayed in **Table 2**.

Table 2. Performance Appraisal Ratings for SES Employees

	Category of SES Employees	Number of SES Rated	Number Rated at Highest Level	Percent Rated at Highest Level
	Overall SES	6,490	4,000	61.6%
FY2004	Career SES	5,848	3,474 ^a	59.4%
	Politically Appointed SES ^b	642	526	81.9%
	Overall SES	6,410	2,850	44.5%
FY2005	Career SES	5,906	2,562	43.4%
	Politically Appointed SES ^b	504	288	57.1%
	Overall SES	6,807	3,046	44.7%
FY2006	Career SES	6,130	2,663	43.4%
	Politically Appointed SES ^b	677	383	56.6%
	Overall SES	7,016	3,379	48.1%
FY2007	Career SES	6,308	2,948	46.7%
	Politically Appointed SES ^b	708	431	60.9%

Sources: U.S. OPM, reports on SES pay for performance, FY2004, FY2005, FY2006, and FY2007.

Notes:

- This figure was not provided by OPM's reports, but was derived by CRS from data that OPM included in its reports (i.e., 59.4% of 5,848 equals approximately 3,474 (rounded by CRS)).
- Calculations in this row were conducted by CRS. "Politically Appointed SES" is this table's term for OPM's formulation "Non-Career and Limited Term SES Employees." It is not clear if OPM included Limited

(...continued)

the materials could be shared with congressional requesters. These include letters and attachments from Kay Coles James, Director of OPM, to Rep. Steny H. Hoyer, dated January 10, 2003; March 26, 2003; June 13, 2003; and July 18, 2003; and to Rep. Tom Davis, then Chairman of the House Committee on Government Reform, August 15, 2003. All are available from CRS on request.

⁵⁴ For example, data about political appointees along several dimensions were not included in U.S. OPM, *Report on Senior Executive Pay for Performance for Fiscal Year 2007*, July 2008. These dimensions include the percentage of employees receiving the highest level performance appraisal rating (Table 1 of the OPM report); number of employees receiving different rating levels (Table 3); and average salary adjustment under the SES pay for performance system (Tables 3 and 4).

Emergency SES employees (5 U.S.C. § 3132(a)(6)) in its totals. Figures in this row are derived by CRS from OPM reports, by subtracting “Career SES” numbers from “Career, Non-Career and Limited Term SES Employees” numbers.

Data in the table cover the time period during which the SES pay for performance system has operated. Part of the motivation behind the new pay system was to address perceptions of too high of a percentage of SES employees receiving the highest level rating,⁵⁵ which may explain decreasing percentages of employees receiving these ratings. Figures in **Table 2** for politically appointed SES employees, which CRS derived from other data in OPM reports, show that the percentage of politically appointed SES employees rated at the highest level has consistently exceeded the percentage of career SES employees.

It is not clear why these differences exist. However, as noted above, differences in career SES employee performance ratings have been shown to be associated with considerably higher average awards. In FY2007, for example, the most highly rated career SES employees received an average performance award of \$15,051 in agencies that have five rating levels and \$17,140 in agencies that have four rating levels.⁵⁶ These figures compared with average performance awards of \$8,615 and \$7,022, respectively, for career SES employees rated at the next lower level. Although politically appointed SES employees are not eligible for these SES performance awards (5 U.S.C. § 5384(a)(1)), politically appointed SES employees are eligible for salary adjustments under the pay for performance system, as well as other kinds of awards discussed earlier. However, these salary adjustments and additional kinds of awards for which politically appointed SES employees are eligible did not appear to be within the scope of OPM’s reports. In sum, it is not clear from publicly available data whether a comprehensive look at awards and salary adjustments for politically appointed SES employees would show higher or lower average levels of award and salary adjustment compensation, compared with career SES employees. However, if the award amounts that politically appointed SES employees receive are similar to those of career SES employees in relation to their performance ratings (e.g., \$15,051 at the highest level and \$8,615 at the next lower level), the consistently higher incidence of top performance ratings for SES political appointees may indicate that politically appointed SES employees receive higher average amounts for awards than career employees receive.

“3R” Incentives

Statutory provisions that authorize agency use of incentives to help recruit, relocate, and retain employees are located in Title 5, Chapter 57, Subchapter IV. Specifically, incentive payments for recruitment and relocation are authorized by 5 U.S.C. § 5753. Incentive payments for retention are authorized by 5 U.S.C. § 5754. As noted earlier, the three incentives commonly are known as the “three Rs,” or “3Rs.” These provisions reflect a substantial revision of previous authorities made by the Federal Workforce Flexibility Act of 2004.⁵⁷ Although the statutory provisions go

⁵⁵ CRS Report RL33128, *Senior Executive Service (SES) Pay for Performance System*, by L. Elaine Halchin. After OPM exhorted and directed agencies to change their appraisal behaviors for several years, these rates decreased for career SES employees, from 83.7% in FY2001, to 74.6% in FY2002, 74.5% in FY2003, and 59.4% in FY2004. U.S. OPM, memorandum from Linda M. Springer, Director, “FY2004 SES Performance Ratings, Awards, and Salaries,” October 4, 2005, <http://www.chcoc.opm.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=588>.

⁵⁶ U.S. OPM, *Report on Senior Executive Pay for Performance for Fiscal Year 2007*, Table 3.

⁵⁷ P.L. 108-411; 118 Stat. 2305. The revised versions of 5 U.S.C. §§ 5753-5754 were contained in Title 1 of the act. As noted earlier, although relevant statutory provisions refer to the 3Rs as “bonuses,” this report refers to them as incentives, in keeping with OPM practice and regulations.

into some detail, they also direct OPM to prescribe by regulation much of how the incentives are to be implemented. Implementing regulations are found in three subparts of 5 C.F.R. Part 575: Subpart A, “recruitment incentives” (5 C.F.R. § 575.101 et seq.); Subpart B, “relocation incentives” (5 C.F.R. § 575.201 et seq.); and Subpart C, “retention incentives” (5 C.F.R. § 575.301 et seq.).

The 3R incentives are discussed below in four sections. The first section focuses on eligibility requirements in statute and regulation that are common to each of the incentive types. The second section discusses several procedural aspects of how incentive payments are to be implemented that are broadly similar among the three incentives. The third section provides an overview of each incentive type’s distinctive parameters and payment amounts, which differ from each other. Finally, the fourth section discusses a common source of data about the 3R incentives. The report presents topics in this sequence, because each section introduces terms and concepts that are used in subsequent sections.⁵⁸

Common Eligibility Requirements

Statutory Eligibility Requirements

Unlike the various award authorities in Chapter 45 of Title 5, 3R incentive authorities in Chapter 57 share the same statutory eligibility requirements. Two types of eligible employees are identified in statute. First, payment to GS employees is authorized by 5 U.S.C. § 5753(a) for recruitment and retention incentives, and by 5 U.S.C. § 5754(a) for retention incentives. Second, the same statutory provisions authorize incentive payments to be made to “employees in a category approved by the Office of Personnel Management at the request of the head of an Executive agency.” The latter authority gives OPM considerable flexibility to allow the payment of incentives, but also embodies an institutional check against overuse of discretion by executive agencies.⁵⁹ OPM maintains an online listing of agencies that have requested and received OPM approval to offer 3R incentives, along with corresponding employee categories and dates of approval.⁶⁰ Some statutorily eligible employees work in legislative branch agencies. Therefore, OPM’s implementing regulations include within the definition of “agency” an executive agency or a legislative branch agency included in 5 U.S.C. § 5102(a)(1) (5 C.F.R. § 575.102; § 575.202; and § 575.302).

Statutory provisions also identify three types of employees—all of which are political appointees in executive agencies—who may not receive these incentive payments (5 U.S.C. § 5753(a) and § 5754(a)). Specifically, an incentive payment may not be made to an individual who is appointed to, or who holds

- a PAS position,

⁵⁸ OPM’s guidance and explanations for agencies on each of the 3R incentives is available at <http://www.opm.gov/oca/pay/>. The third section draws some text verbatim from these online resources.

⁵⁹ An “institutional check” refers to the situation when Congress delegates authority to an agency but also ensures that one or more additional agencies or entities can veto or block the delegate agency’s actions. For discussion, see CRS Report RL32388, *General Management Laws: Major Themes and Management Policy Options*, by Clinton T. Brass, section titled “Discretion for the Executive Branch.”

⁶⁰ “Recruitment, Relocation, and Retention Incentives: Coverage of Non-General Schedule Employees Under Single-Agency Pay Systems,” http://www.opm.gov/oca/pay/HTML/3Rs_extensions.asp.

- a noncareer SES position,⁶¹
- a Schedule C position (“a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character”).

Eligibility is further determined by the 3R authorities’ definition of “employee.” Relevant provisions define the term as having the same meaning as in 5 U.S.C. § 2105 (officers and individuals appointed in the civil service by the President, a Member of Congress, etc.), but also including employees paid from nonappropriated funds of several military exchanges (5 U.S.C. § 2015(c)).

Regulatory Eligibility Requirements

OPM’s implementing regulations further specify ineligible and eligible categories of employees. The OPM regulations identify ineligible categories of employees as including those specified in statute, but also any position (1) “[t]o which an individual is appointed by the President without the advice and consent of the Senate”; (2) “[d]esignated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members”; or (3) “[i]n which the employee is expected to receive an appointment as the head of an agency” (5 C.F.R. § 575.104; § 575.204; and § 575.304).

Aside from these categories of employees designated as ineligible, regulations specify in some detail that eligible employees include those appointed or placed in several categories of executive agency positions (5 C.F.R. § 575.103(a); § 575.203(a); and § 575.303(a)):

- a GS position paid under 5 U.S.C. § 5332 (“The General Schedule”), or 5 U.S.C. § 5305 (“special pay authority”) or a “similar special rate authority”;
- an SL or ST position paid under 5 U.S.C. § 5376;
- an SES position paid under 5 U.S.C. § 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration SES position paid under 5 U.S.C. § 3151;
- a law enforcement officer position, as defined at 5 C.F.R. § 550.103;
- a position under the Executive Schedule paid under 5 U.S.C. §§ 5311-5317 or a position with a rate of pay fixed by law at a rate equal to a rate for the Executive Schedule;
- a prevailing rate position, as defined in 5 U.S.C. § 5342(a)(3);
- “any other position in a category for which payment of” recruitment, relocation, or retention “incentives has been approved by OPM at the request of the head of an executive agency.”

Aside from the same categories of ineligible employees as discussed above, a legislative branch agency may pay an incentive to an employee appointed or placed in a GS position paid under 5

⁶¹ 5 U.S.C. § 3132(a) defines a noncareer SES appointee as “an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee.” Notably, this restriction against incentive payments does not apply to limited term or limited emergency SES employees.

U.S.C. § 5332, or 5 U.S.C. § 5305 or a similar special rate authority (5 C.F.R. § 575.103(b); § 575.203(b); and § 575.303(b)).

Similar Procedural Aspects

Many procedural aspects of the three types of 3R incentives are similar, but not identical, in their details. In general, the authorizing legislation and OPM's regulations grant considerable discretion to agencies. At the same time, however, many procedures focus on establishing transparency in decision making, accountability for decisions, and mechanisms to prevent or halt potential abuse.

Incentive Plans and Approval Levels

Before any payments are made, each statutory authority requires OPM to require that each agency establish a plan for its use of incentives (5 U.S.C. § 5753(f) and § 5754(g)). Implementing regulations specify the elements that are required for a plan, including the designation of officials with responsibility and authority to review and approve determinations to make payments (5 C.F.R. § 575.107, § 575.207, and § 575.307).

Agency Discretion Subject to OPM Oversight and Required Factors

OPM's implementing regulations for each incentive give agency officials "sole and exclusive discretion, subject only to OPM review and oversight," to determine when a position is likely to be difficult to fill (recruitment and relocation) or when it is essential to retain an employee (retention). However, the regulations also identify specific factors that an agency must consider in making any decisions (5 C.F.R. § 575.106; § 575.206; and § 575.306).

Written Service Agreements

Statutory provisions require for each incentive that an employee enter a written service agreement, with certain minimum components and conditions for termination, before a payment may be made (5 U.S.C. § 5753(c) and § 5754(d)). Implementing regulations further specify required components, termination conditions (both at the agency's discretion and when termination is mandatory), and termination procedures (5 C.F.R. § 575.110-575.111, § 575.210-575.211, and § 575.310-575.311).

Approval Criteria and Written Determinations

Agencies must document in writing the basis for specific decisions, including the basis for determining (1) that a position would be difficult to fill (or an employee is essential to retain); (2) that a position or employee should be subject to the payment of an incentive; (3) the parameters of the amount and timing of the incentive; and (4) the length of the required service period (5 C.F.R. § 575.108; § 575.208; and § 575.308).

Internal Monitoring and Potential Revocation or Suspension

Agencies are required to monitor the use of incentives to ensure that their incentive plans and payments are consistent with statutory and regulatory requirements and criteria. If OPM finds that an agency is not paying incentives consistent with incentive plans, statutes, and regulations, or “otherwise determines that the agency is not using [any of the three incentive authorities] selectively and judiciously,” OPM may take two courses of action (5 C.F.R. § 575.112; § 575.212; and § 575.312). First, OPM may direct an agency to revoke or suspend incentive authority for an organizational component and, with respect to any category of employees, require the component to obtain approval from the agency’s headquarters level before paying an incentive. Second, OPM may revoke or suspend incentive authority for all or any part of the agency and, with respect to any category of employees, require the agency to obtain OPM’s approval before paying an incentive.

Record Keeping and Reporting to OPM and Congress

Implementing regulations require each agency to keep a record of each determination to pay an incentive and make records available to OPM on request (5 C.F.R. § 575.113; § 575.213; and § 575.313). Agencies also are required to submit written reports to OPM in each of the years 2006 through 2010 on the use of incentive authorities in the previous calendar year, including certain information and statistics, for use in compiling an OPM report to Congress required by Section 101(c) of the aforementioned Federal Workforce Flexibility Act of 2004.

Distinctive Parameters and Payment Amounts

Recruitment Incentives⁶²

An agency may pay a recruitment incentive to a newly-appointed employee if the agency has determined that the position is likely to be difficult to fill in the absence of an incentive. An “employee” also may be an individual not yet employed who has received a written offer and has signed a written service agreement. An agency also may target groups of similar positions for recruitment incentives. Before receiving the incentive, an employee must sign a written service agreement to complete a specified period of employment with the agency. The employee’s required service period may not be less than six months and may not exceed four years. The recruitment incentive payment may not exceed 25% of the employee’s annual rate of basic pay in effect at the beginning of the service period, multiplied by the number of years (including fractions of a year) in the service period. With OPM approval, the incentive may be increased to 50% (based on a critical agency need), but the total of incentive payments may not exceed 100% of the employee’s annual rate of basic pay in effect at the beginning of the service period. The incentive may be paid as an initial lump-sum at the beginning of the service period, in installments, as a final lump-sum, or in a combination of these methods.

⁶² For OPM’s summary fact sheet, see <http://www.opm.gov/oca/pay/HTML/RECBONFS.asp>.

Relocation Incentives⁶³

An agency may pay a relocation incentive to a current employee who must permanently or temporarily relocate to accept a position in a different geographic area if the agency determines that the position is likely to be difficult to fill in the absence of an incentive. A relocation incentive may be paid only when the employee's rating of record is at least "fully successful" or the equivalent. A position is considered to be in a different geographic area if the new position's work site is 50 or more miles from the prior position's work site, but this restriction may be waived if an employee must relocate (e.g., establish a new residence) to accept the position. An employee must establish a residence in the new geographic area before the incentive payment may be made. Agency determinations to pay a relocation incentive generally must be made on a case-by-case basis, but an agency may waive this requirement when the employee is a member of a group of employees subject to a mobility agreement or when a major organizational unit is being relocated to a new duty station. A relocation incentive payment may not exceed 25% of the employee's annual rate of basic pay in effect at the beginning of the service period, multiplied by the number of years (including fractions of a year) in the service period, which may not exceed four years. With OPM approval, the incentive may be increased to 50% (based on a critical agency need), but the total of incentive payments may not exceed 100% of the employee's annual rate of basic pay in effect at the beginning of the service period. The incentive may be paid as an initial lump-sum at the beginning of the service period, in installments, as a final lump-sum, or in a combination of these methods.

Retention Incentives

Retention incentives are authorized for employees in two situations: (1) when an employee is likely to leave federal government service in the absence of a retention incentive; and (2) when an employee is likely to leave for a different federal government position in the absence of a retention incentive. The latter authority receives substantially separate attention in OPM's regulations (5 C.F.R. § 575.315).

*Likely to Leave Federal Service*⁶⁴

An agency may pay a retention incentive to a current employee if the agency determines that the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee, and that the employee would be likely to leave federal service in the absence of a retention incentive. A retention incentive may be paid only when the employee's rating of record is at least "fully successful" or the equivalent. An agency must establish a single retention incentive rate for the employee, expressed as a percentage of the employee's rate of basic pay, not to exceed 25%. With OPM approval, this rate may be increased to 50% (based on a critical agency need). The incentive may be paid in installments after the completion of specified periods of service within the full period of service required by the service agreement, or in a single lump sum after completion of the full period of service required by the service agreement. An agency may not pay a retention incentive as an initial lump-sum payment at the start of a service period or in advance of fulfilling the service

⁶³ For OPM's summary fact sheet, see <http://www.opm.gov/oca/pay/HTML/RELBNFS.asp>.

⁶⁴ For OPM's summary fact sheets, see <http://www.opm.gov/oca/pay/HTML/RETALLFS.asp> (individual employee) and <http://www.opm.gov/oca/PAY/HTML/GRPALLFS.asp> (group of employees).

period. An agency may not offer or authorize a retention incentive for an individual prior to employment with the agency. An agency may pay a retention incentive of up to 10% of basic pay (or up to 50% with OPM approval, based on a critical agency need) to an eligible group or category of employees. A written service agreement is not required if the agency pays the retention incentive in biweekly installments at the full retention incentive percentage rate.⁶⁵ In the absence of a service agreement, an agency must annually review each determination to pay a retention incentive to determine whether payment is still warranted and certify the determination in writing.

Likely to Leave for Different Federal Position⁶⁶

An agency may pay a retention incentive to a current employee if the agency determines that the agency has a special need for the employee's services that makes it essential to retain the employee in his or her current position during a period of time before the closure or relocation of the employee's office, facility, activity, or organization, and that the employee would be likely to leave for a different position in the federal service in the absence of a retention incentive. This type of retention incentive may be paid only when the employee's rating of record is at least "fully successful" or the equivalent and the agency has provided a written notice to the employee that his or her position would be affected by the aforementioned closure or relocation. An agency must establish a single retention incentive rate for the employee, expressed as a percentage of the employee's rate of basic pay, not to exceed 25%. With OPM approval, this rate may be increased to 50% (based on a critical agency need). Provisions for computing and paying retention incentives under 5 C.F.R. § 575.309 (regarding an employee likely to leave federal service) generally apply to retention incentives for such an employee, but an agency may not pay a retention incentive in biweekly installments at the full retention incentive percentage rate (i.e., an agency must "backload" some of the incentive payment to provide an incentive for the employee to serve the full service period; 5 C.F.R. § 575.315(e)(2)). A written service agreement is required. An agency must review each determination to pay a retention incentive at least annually to determine if payment is still warranted. An agency must terminate a service agreement if the aforementioned closure or relocation is cancelled or no longer affects the employee's position. Additional employee entitlements and agency obligations in the event of termination of a service agreement are specified (5 C.F.R. § 575.315(g)). Unique reporting requirements about the exercise of this authority also are required (5 C.F.R. § 575.315(i)).

Payment of Concurrent 3R Incentives

With one exception, OPM's regulations prohibit the simultaneous payment of multiple incentives and prohibit concurrent 3R service agreements (5 C.F.R. § 575.105(c), § 575.205(d)-575.205(e),

⁶⁵ This refers to a situation when an agency structures the service agreement to pay individual installments at a rate equal to the percentage rate of the overall incentive. That is, a 10% overall incentive that is paid in installments at a biweekly rate of 10% of each biweekly period's pay would not require a service agreement. However, a service agreement is required if the agency structures the service agreement to "backload" some of the overall incentive payment to the end of the service period, presumably in order to provide an incentive for the employee to serve the full period. In this situation, a recipient would receive installments at a lower rate until the end of the service agreement (e.g., 7% of biweekly pay instead of 10%) followed by a final installment payment that includes the remaining accrued but unpaired portion of the full incentive payment.

⁶⁶ For OPM's summary fact sheets, see <http://www.opm.gov/oca/pay/HTML/RETINCFED.asp> (individual employee) and <http://www.opm.gov/oca/pay/HTML/GRPINCFED.asp> (group of employees).

§ 575.309(g)). Under 5 C.F.R. § 575.205(e), an agency may commence a relocation incentive service agreement during a period of employment established under a previously authorized retention service agreement (or when an employee is receiving previously authorized retention incentive payments without a service agreement). However, OPM has noted that the authorities provide an agency with flexibility to terminate one incentive (e.g., allowing an employee to keep certain payments attributable to completed service) and authorize a different incentive in its place in situations in which offering multiple kinds of incentives may otherwise support the agency's staffing needs.⁶⁷

Sense of Congress Regarding Interagency Competition

Under the Federal Workforce Flexibility Act of 2004, Congress included a "Sense of Congress" provision focused on the potential for 3R incentives to be used in ways that promote interagency competition for employees and adversely affect the abilities of agencies to carry out their missions (P.L. 108-411, Sec. 101(a)(3); 118 Stat. 2309). The provision expressed the sense of Congress that two things should happen. First, the Director of OPM should be notified within 60 days each time an incentive is paid to (1) recruit or relocate a federal employee from one agency to another within the same geographic area or (2) retain a federal employee who might otherwise leave one government agency for another within the same geographic area. Second, the Sense of Congress provision expressed the sense that the Director of OPM should monitor the payment of the aforementioned incentives "to ensure they are an effective use of the Federal Government's funds and have not adversely affected the ability of those Government agencies that lost employees to other Government agencies (in such circumstances) to carry out their mission."

Common Data Source

With passage of the Federal Workforce Flexibility Act of 2004, Congress established a reporting requirement for OPM on the operation of the revised 3R incentives. Section 101(c) of the act requires OPM to submit annual reports for each of the first five years during which the new 3Rs are in effect to the Senate Committee on Governmental Affairs (now, Senate Committee on Homeland Security and Governmental Affairs) and the House Committee on Government Reform (now, House Committee on Oversight and Government Reform). The reports are required to include several specific types of information about how the incentive authorities were used.

OPM has issued several reports in response to the act's requirement and posted them online.⁶⁸ The report for calendar year 2007 reported that 41 agencies paid a total of 32,484 3R incentives to employees, amounting to more than \$207 million.⁶⁹ However, OPM noted that these totals do not reflect any information about recruitment, relocation, or retention payments authorized under "independent agency authority" (i.e., statutory provisions elsewhere in Title 5 or other titles of the *United State Code*). The agencies included all 15 cabinet departments and numerous independent

⁶⁷ For OPM's explanations of the rationales for, and interactions among, these rules, see U.S. OPM, "Recruitment, Relocation, and Retention Incentives," 72 *Federal Register* 67831, at 67832, December 3, 2007.

⁶⁸ "Reports to Congress—Recruitment, Relocation, and Retention Incentives," available at <http://www.opm.gov/oca/pay/html/3rsreporttocongress-index.asp>.

⁶⁹ U.S. OPM, *Calendar Year 2007 3Rs Report*, Table 2, pp. 10-11. OPM reported receiving responses from 97 agencies to a request for information, 56 of which reported using no incentives during 2007. It is not clear which agencies, if any, did not respond to OPM's request.

agencies, including the Library of Congress and the Smithsonian Institution. Because OPM requested agencies to report information as a “single entity,” the report does not break down data by subagency.⁷⁰

The use in 2007 of recruitment incentives (7,716 incentives and \$57.5 million paid) and relocation incentives (1,974 incentives and \$23.2 million paid) both represented a near-doubling of usage, in terms of numbers of incentives, compared with 2006. The average recruitment and relocation incentives were \$7,454 and \$11,735, respectively. OPM reported that the use in 2007 of retention incentives (22,794 incentives and \$127.0 million paid) was not directly comparable to 2006, because retention allowances under the previous version of 5 U.S.C. § 5754 were “grandfathered” to be able to continue until 2006.

The Department of Defense was the biggest user in 2007 of each type of 3R incentives, followed in all three cases by the Department of Veterans Affairs.⁷¹ OPM also provided aggregated data on the use of incentives by occupational series, pay plan, and GS grade. Among pay plans, GS employees received by far the most retention incentives (16,313 incentives and \$92.3 million paid). These incentives were spread among all grade levels except GS-1, with over 1,000 incentives being paid to employees in each of nine different grade levels.⁷² OPM also asked agencies to provide information on any barriers they faced in using 3R incentives. A handful of agencies reported that budgetary constraints were the most significant barrier.⁷³

Potential Issues for Congress

Potential issues for Congress that are related to federal employee awards and incentives include questions of

- how to provide agencies with effective human resources management tools in light of agency missions and resource levels;
- how agencies are using these and other authorities to recruit, motivate, reward, and retain high-performing workforces;
- how to structure oversight and regulation of agency practices within the executive branch; and
- how to exercise congressional oversight over a civil service system that is increasingly fragmented (i.e., decentralized in execution and customized to individual agencies and workforces).

Perspectives on these questions may be visualized using a framework like the one shown in **Figure 1**.

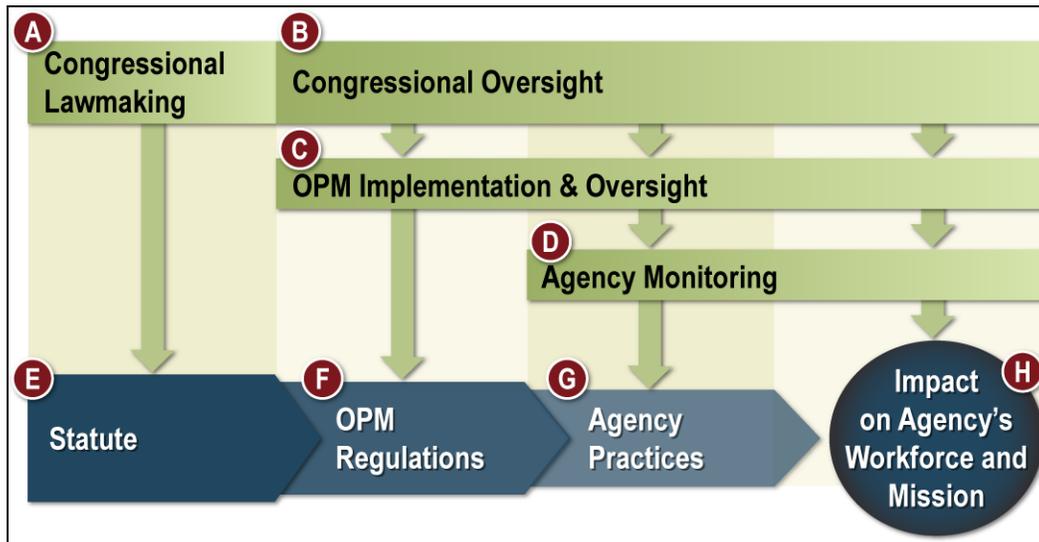
⁷⁰ Ibid., p. 3.

⁷¹ Ibid., Tables 5, 6, and 7, pp. 14-15.

⁷² Ibid., p. 22.

⁷³ Ibid., p. 39.

Figure 1. Framework for Issues Related to Design, Implementation, and Oversight of Federal Employee Awards and Incentives



Source: CRS.

The first bulleted question, above, focuses on how Congress may design laws related to awards and incentives (in **Figure 1**, see (A) and (E)). The potential scope of lawmaking ((E) and (F)) includes not only the specific awards and incentives themselves, but also how OPM and agencies are to be required to implement, oversee, monitor, and evaluate implementation of these laws ((C), (D), (F), (G), and (H)). The second question, concerning how agencies are using statutory authorities, focuses on (G) and (H). The third question asks how Congress might direct OPM and agencies through law ((A) and (E)) to properly oversee and manage the use of awards and incentives ((C), (D), (F), (G), and (H)). Finally, the fourth question asks how Congress might exercise its oversight power and prerogatives ((B)) over OPM implementation and oversight ((C) and (F)), agency actions ((D) and (G)), and the results of OPM and agency activities ((H)). This report concludes by posing these questions and discussing potential options for congressional study, oversight, and lawmaking that could be pursued in government-wide and specific agency or workforce contexts.

Designing and Modifying Statutory Authorities

How should Congress provide agencies with effective human resources management tools in light of their missions and resource levels? Answers to this question will be numerous depending on specific agency missions, environments, and resource levels.⁷⁴ Nonetheless, several overall themes may arise.

⁷⁴ There has been increasing emphasis in the private and public sectors on the concept of “fit” between human resources (HR) practices and an organization’s strategies for accomplishing its mission and goals. One text explains the concept of fit as “making sure HR activities ‘make sense’ and help the organization to achieve its goals and objectives” (Cynthia D. Fisher, Lyle F. Schoenfeldt, and James B. Shaw, *Human Resource Management*, 6thed. (Boston: Houghton Mifflin, 2006), p. 67).

Some context may be helpful. The federal civil service increasingly has been customized to individual agencies and workforces (e.g., doctors, nurses, law enforcement officers).⁷⁵ It also has been increasingly decentralized in execution. The civil service typically is described as divided into three separate services: the competitive service, the excepted service, and the SES. The competitive service has its statutory basis in the general personnel laws of Title 5, and specifically Title 5's appointment provisions. The SES has its own customized appointment provisions in Title 5. Employees who are in the excepted service work in agencies or organizations that operate outside of Title 5's appointment provisions.⁷⁶ Different statutory provisions relating to hiring, pay, awards, and labor-management relations may apply to these workforces or portions of these workforces. At the same time, functions once performed by OPM or centralized offices have been delegated to agencies or contracted out. An implication of this customization and decentralization is that pay, award, and incentive authorities available to specific agencies and workforces may differ substantially across government.

Title 5 award and incentive authorities have wide coverage across agencies and workforces. Perhaps as a recognition of this diversity, Congress granted extensive flexibility and discretion to agencies under these Chapter 45 and Chapter 57 provisions to customize award and incentive practices to fit agency missions, environments, and resource levels. It may be fair to ask, however, for any given agency or workforce, whether these authorities—alone or in combination with agency- or workforce-specific “carve out” authorities—give agencies the capabilities they need in order to properly recruit, motivate, reward, and retain high-performing workforces. How would one make such an assessment? For example, how do these award and incentive authorities relate to an agency's pay system(s) and alternative award and incentive authorities? To what extent does an agency offer intrinsic rewards and incentives (e.g., autonomy, professional development) in addition to extrinsic ones (e.g., involving monetary compensation)? What is the proper balance between intrinsic and extrinsic rewards in a specific agency or workforce situation? Such issues typically would require case-by-case analysis, in light of an agency's or workforce's circumstances and mission. Furthermore, related issues frequently arise in the context of such questions, including questions of how agencies actually are using their authorities, why they use them in these ways, and how best to balance agency flexibility with oversight and accountability.

Looking at Agency Practices for Clues

It may be difficult to address fundamental questions of how to design or modify award and incentive authorities without first looking at specific agency or workforce situations and, just as significant, the practice of how agencies have utilized existing authorities. Actual agency practice may offer significant clues about how an agency is working within its current statutory authorities, management capacities, resource level, and policy environment to recruit, motivate, appraise, reward, and retain its overall workforce and more specialized subset workforces.

⁷⁵ For discussion, see “Title 5: The Federal Civil Service,” by Barbara L. Schwemle, in CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al. Title 5 defines the civil service as consisting “of all appointive positions in the executive, judicial, and legislative branches of the Government of the United States, except positions in the uniformed services” (5 U.S.C. § 2101). The “uniformed services” refers to the United States' armed forces, commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

⁷⁶ For more discussion, see U.S. General Accounting Office, *The Excepted Service: A Research Profile*, GAO/GGD-97-72, May 1997.

Agency behaviors may reveal that some statutory authorities, management capacities, or resource levels may need to be studied or changed to address emerging challenges inside an agency or outside the agency in its policy environment. Without study and investigation, however, it may be difficult to identify the true sources of problems.

For example, to what extent is a retention problem within part of an agency's workforce a function of competition from nongovernmental employers? What is the basis for the attractiveness of alternative places of employment? Does the competition derive primarily from intrinsic factors, extrinsic factors, or both? If salary competition is a major source of competition, is an agency using awards or incentives to compensate for a perceived lack of competitiveness? Alternatively, are recruitment or retention problems more a symptom of outmoded management practices, program design, or organizational structures?

More broadly, are awards and incentives being used in ways that would be viewed as appropriate and legitimate by oversight institutions and stakeholders (e.g., OPM, Congress, and the public)? For example, are employees who receive retention incentives truly likely to leave federal service without the incentive payments? How are such determinations made? To what extent are awards and incentives being used to cope with increasing pay compression in civil service basic pay due to pay caps linked to the Executive Schedule?⁷⁷ Or are they being used as salary enhancements for privileged segments of an agency's workforce? In the case of awards, is the performance appraisal system that underlies an agency's award decisions

- “valid” (the system measures aspects of performance under an employee's control that reflect relevant job characteristics and are free from contaminating factors outside the employee's control),
- “reliable” (e.g., different raters would agree on criteria and determinations), and
- “free from bias” (e.g., free from rating errors such as leniency, severity, central tendency, or “halo” effects)?⁷⁸

The way in which systems of oversight and regulation are structured within agencies and the executive branch may help provide answers to questions like the ones posed above.

Structuring Oversight and Regulatory Mechanisms in Agencies and the Executive Branch

Several approaches have been used by Congress to establish oversight and regulatory mechanisms within agencies and the executive branch. For example, Congress frequently has provided for institutional checks within agencies and the executive branch. As noted earlier, an institutional check refers to the situation when Congress delegates authority to an agency but also ensures that one or more additional agencies or entities can veto or block the delegate agency's actions.⁷⁹ Institutional checks were created with OPM's roles in the implementation of Chapter 57

⁷⁷ For related discussion of pay compression, see CRS Report RL34380, *The Executive Schedule IV Pay Cap on General Schedule Compensation*, by Curtis W. Copeland.

⁷⁸ For discussion, see Cynthia D. Fisher, Lyle F. Schoenfeldt, and James B. Shaw, *Human Resource Management*, pp. 429-438, 442-443.

⁷⁹ For discussion, see CRS Report RL32388, *General Management Laws: Major Themes and Management Policy Options*, by Clinton T. Brass, section titled “Discretion for the Executive Branch.”

incentive authorities, for example (e.g., 5 C.F.R. § 575.112; § 575.212; and § 575.312). However, it is unclear whether OPM has ever revoked or suspended an agency's authority to offer incentives.

When well designed, an institutional check may produce information that might galvanize action to address problems, without need for congressional intervention, and involve other parties in decision making when one party may not be fully relied upon to act in the public interest when acting alone or behind closed doors. Related issues for Congress may involve whether and how to create institutional checks within an agency, or within the executive branch, to ensure that laws are executed faithfully to congressional intent. On one hand, institutional checks may create additional bureaucratic hurdles that result in some inefficiency and frustration. On the other hand, institutional checks may not result in unnecessary red tape and may be judged necessary in order to avoid abuses and management dysfunctions and promote the accomplishment of agency missions and goals. Congress also has established oversight and regulatory capacity in agencies and the executive branch through the use of planning, transparency, and reporting requirements. Such requirements also may address issues of congressional oversight.

Exercising Congressional Oversight

It has become widely recognized that Congress does not have resources to pursue in-depth oversight and investigations into all areas of public policy and management that some observers might wish.⁸⁰ With an increasingly customized and decentralized civil service "system," these issues may be especially relevant to HR authorities and practices, including those related to employee awards and incentives. How, then, might Congress exercise oversight over a civil service system that is increasingly fragmented? In making this assessment, Congress may decide that current statutes and practices provide for sufficient oversight. However, if Congress determines that additional avenues of transparency and oversight about employee awards and incentives should be explored (e.g., along with corresponding workforce authorities and practices), several options might be considered.

In general, Congress needs information about the conduct of federal agencies in order to fulfill its constitutional obligations. Two challenges appear to be the most significant, in this regard, for employee awards and incentives: (1) efficiently and accurately identifying the governing award and incentive authorities for specific agencies, workforces, and other groups of employees, including "carve out" provisions inside and outside of Title 5; and (2) getting timely and specific data on agency practices and utilization of these authorities. For example, the incidence of Chapter 45 awards appears to have received little attention in publicly available documents from OPM for several years. Data on awards to political appointees also appears to be sparse, at least publicly.

⁸⁰ Ibid., and Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms," *American Journal of Political Science*, vol. 28, February 1984, pp. 165-179. Arguably in response to these challenges, Congress expanded the number and types of "general management laws" that cover myriad aspects of federal management in order to provide enhanced oversight tools and mechanisms, oftentimes through public transparency and participation requirements that allow non-congressional observers to "raise flags" for Congress's attention, in case problems are perceived. For more information, see CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al.

In response to challenges like these, one option might be to establish more formal reporting requirements for OPM and agencies (e.g., make permanent the reporting requirements for 3R incentives that were included in the Federal Workforce Flexibility Act of 2004). Another option might be to focus on long-term information technology solutions to matters of data availability and accuracy. Another might be to amend 5 U.S.C. § 1103(c), which requires OPM to “design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies,” to require agencies and OPM to provide desired information in an accessible format to Congress and the public. OPM’s implementation of the statute from enactment of the provision through 2008 appeared to produce information primarily for the use of OPM and entities within the executive branch under the George W. Bush Administration’s President’s Management Agenda (PMA), with little public disclosure of OPM’s detailed evaluations of agency information.⁸¹ A third option might be to conduct oversight hearings to influence agency practices and prompt the release of information. A fourth option might be to more formally require agency and OPM reporting on subjects of congressional interest, perhaps including summary or detailed statistics or specific documents.

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⁸¹ OPM has used the Human Capital Assessment and Accountability Framework (HCAAF) to comply with 5 U.S.C. § 1103(c). Per OPM, “[e]stablishment of the HCAAF and its related standards and metrics, fulfills OPM’s mandate under the Chief Human Capital Officers Act of 2002 (CHCO Act), as codified at 5 U.S.C. 1103 (c), and implemented under subpart B of 5 CFR 250, to design systems and set standards, including appropriate metrics, for assessing the management of human capital by Federal agencies” (see http://www.opm.gov/hcaaf_resource_center/2-2.asp). In 2008, OPM issued regulations to implement the statutory requirements that are located at 5 C.F.R. Part 250. However, OPM did not mandate that the plans and reports that are required by the regulation be posted online (*73 Federal Register* 23013; April 28, 2008).