UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

August 3, 2010

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: **JOHN BERRY**
DIRECTOR

Subject: **Guidance on Freeze on Discretionary Awards, Bonuses, and Similar Payments for Federal Employees Serving under Political Appointments**

In his memorandum to the White House chief of staff and to heads of executive departments and agencies announcing a freeze on discretionary awards, bonuses, and similar payments for politically appointed Federal employees (i.e., political appointees), the President directed the Office of Personnel Management (OPM) to issue guidance, in consultation with the Office of Management and Budget, to assist agencies in implementing the freeze. (See the Attachment.) To the extent permitted by law, the President's directive applies to all executive agencies, as defined in 5 U.S.C. 105. In addition, agencies with independent legal authority regarding awards, bonuses, and similar payments are strongly encouraged to follow the President's directive and the guidance in this memorandum. The directive does not address the President's proposed salary freeze for senior political appointees across the Executive Branch—a proposal that will require legislative action, except in the case of the ongoing pay freeze for White House senior staff.

Political appointees are in positions that have been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character and are excepted from the competitive service by law, Executive order, OPM, or other authority. The following OPM guidance is to assist agencies in identifying political appointees covered by the freeze so that discretionary awards, bonuses, and similar payments are not paid commencing on the date of the President's memorandum and continuing through the end of fiscal year 2011 (i.e., September 30, 2011).

Political Appointees

There are three broad categories of employees that are considered to be political appointees for the purposes of the President's policy: (1) Presidential appointments (made with or without the advice and consent of the Senate); (2) noncareer Senior Executive Service (SES) appointments or equivalent appointments under a special authority; and (3) Schedule C appointments or equivalent appointments under a special authority. Below are examples of political appointees in each category. The examples are not all inclusive.

Presidential Appointees. There are two types of Presidential appointees: (1) those appointed with the advice and consent of the Senate (PAS) and (2) other individuals appointed by the President (PA). Presidential appointees are political appointees except as described in the later

section "Presidential Appointees Who Are Excepted from the Freeze." Examples of Presidential appointees include the following:

- Heads of executive branch departments and agencies;
- Deputy Secretaries, Administrators, or Directors;
- Chiefs of mission, ambassadors, and Ambassadors at Large serving in positions pursuant to a PAS appointment under section 302(a)(1) of the Foreign Service Act of 1980;
- United States Marshals (28 U.S.C. 561(c)); and
- Members of the White House staff with PA appointments.

Noncareer SES Members or Equivalent. The SES has four types of appointments—career, noncareer, limited term, and limited emergency. Noncareer SES members are political appointees. Limited term and limited emergency SES appointments may be political appointments if made to a position that is political in character (e.g., established for an individual pending PAS appointment, for political transition purposes, or for other political purposes of the agency or Administration). This includes all SES limited appointments cleared through the Office of Presidential Personnel. Certain agencies may have special appointment authorities that are equivalent to the SES authority; an employee under such an appointment that is equivalent to an SES political appointment is a political appointee.

Schedule C Appointees or Equivalent. The Schedule C appointing authority in OPM regulations at 5 CFR 213.3301-213.3302 allows certain positions to be excepted from the competitive service due to the confidential or policy-determining character of the position. All Schedule C appointees are political appointees. Certain agencies may have special appointment authorities that are equivalent to the Schedule C authority; an employee under such an appointment that is equivalent to the Schedule C political appointment is a political appointee. Schedule C appointments may be used for various types of positions, including General Schedule (GS) positions, senior-level (SL) positions under 5 U.S.C. 5376(a)(1), and positions in a pay plan established under a special agency pay authority.

Discretionary Awards, Bonuses and Similar Payments Affected by the Freeze

This section identifies examples of payments affected by the freeze ordered by the President. The list of examples is not all inclusive. Any similar payments are also affected by the freeze.

Awards

Performance Awards. Agencies may not authorize or pay rating-based performance awards under the authority of 5 U.S.C. 4505a and 5 CFR part 451, subpart A, to political appointees as of the date of the President's memorandum through the end of fiscal year 2011. Equivalent performance awards under similar authorities may not be authorized for political appointees.

Special Act Awards. Agencies may not authorize or pay single contribution-based special act awards for either individual or group achievements under the authority of 5 U.S.C. 4503 and 5 CFR part 451, subpart A, to political appointees as of the date of the President's memorandum through the end of fiscal year 2011. Special act awards include on-the-spot, suggestion, invention, gainsharing, goalsharing, referral bonus, and travel savings awards. Equivalent special act awards under similar authorities may not be authorized for political appointees.

Ongoing Statutory Prohibitions. The law prohibits granting cash awards **at any time** to individuals serving in Executive Schedule PAS positions (5 U.S.C. 4509 and 5 CFR 451.105). The law provides authority for SES performance awards for career members, but not for noncareer or limited SES members (5 U.S.C. 5384 and 5 CFR 534.405).

> NOTE: Time-off awards and nonmonetary awards (e.g., a plaque or certificate) are not subject to the freeze. Agencies may continue to authorize or grant time-off awards and nonmonetary awards to political appointees.

Bonuses

Recruitment, Relocation, and Retention Incentives (3Rs). By law and regulation, agencies are prohibited from authorizing or paying recruitment, relocation, and retention incentives under 5 U.S.C. 5753 and 5754 to political appointees. (See 5 U.S.C. 5753(a)(2) and 5754(a)(2) and 5 CFR 575.104, 575.204, and 575.304.) Based on the President's memorandum, agencies may not authorize or pay similar discretionary recruitment, relocation, and retention bonuses and payments under an independent agency authority to political appointees as of the date of the President's memorandum through the end of fiscal year 2011. Any such bonuses or payments that were approved and put into effect before the President's memorandum and any required service agreements associated with such payments should be suspended during this time period to the extent permitted by law.

Similar Payments

Quality Step Increases. Agencies may not authorize or pay GS quality step increases under 5 U.S.C. 5336 and 5 CFR part 531, subpart E, to Schedule C employees effective as of the date of the President's memorandum through the end of fiscal year 2011. However, agencies must continue to grant regular GS within-grade increases to Schedule C employees (5 U.S.C. 5335 and 5 CFR part 531, subpart D).

Other Discretionary Increases. Discretionary increases in the rate of basic pay for political appointees under other pay authorities that are similar to quality step increases are also subject to the freeze. However, discretionary pay increases provided in connection with a change in position (e.g., promotion, reassignment, transfer) would generally not be considered "similar" increases and are not subject to the freeze. Also, discretionary increases in an employee's rate of basic pay within a pay range that are provided on a regular cycle (e.g., annually) are not considered "similar" increases and are not subject to the freeze.

By law, SES pay increases must be based on individual performance or contributions to the agency's performance. Since the law does not allow for SES pay increases to be based on other factors, basic pay increases (of any type) for all SES employees are unaffected by the freeze.

Presidential Appointees Who Are Excepted from the Freeze

Exceptions to the freeze are authorized for career SES members with a PAS or other qualifying appointment who elect to retain eligibility for SES basic pay and awards under 5 U.S.C 3392(c). This is a statutory benefit for career SES members serving as political appointees, and such individuals continue to be eligible for SES basic pay and awards on the same basis as career SES members. (Career SES members retaining SES benefits when accepting a Presidential appointment may not retain coverage under the 3Rs authorities in 5 U.S.C. 5753 and 5754.)

Although Foreign Service Officers and career members of the Senior Foreign Service (SFS) appointed under section 302(a)(1) of the Foreign Service Act receive PAS appointments, they are not political appointees and are not subject to the freeze. Also, SFS members with PAS or PA appointments who elect to retain eligibility for SFS performance awards under section 302(b) of the Foreign Service Act of 1980 are not political appointees and are not subject to the freeze.

Presidential appointees who are appointed under the Schedule A authority in 5 CFR 213.3102(c) are not political appointees, since they do not hold positions of a confidential or policy-determining character; accordingly, they are not subject to the freeze.

Other exceptions may occur for certain Presidential appointees, such as the Director of the Secret Service, who retain their status as career SES members while they serve as a Presidential appointee. As career SES members, they remain eligible for performance awards and are not subject to the freeze.

Implementation and Report to OPM

Agencies must implement the freeze on discretionary awards, bonuses, and similar payments for covered political appointees as of the date of the President's memorandum. Further, not later than 30 days after the date of OPM's memorandum, agencies must report to OPM on the number of employees affected by the freeze. Each agency must submit one report for the entire agency providing counts by type of appointment: Presidential appointment with Senate confirmation (PAS), Presidential appointment without Senate confirmation (PA), noncareer SES, limited term SES/political, limited emergency SES/political, noncareer SES equivalent, Schedule C, and Schedule C equivalent. For each type of appointment, provide a subcount by pay plan (using standard pay plan codes—e.g., GS for General Schedule, ES for Senior Executive Service, SL for senior level positions under 5 U.S.C. 5376(a)(1), AD for administratively determined pay plans, EX for Executive Schedule). Submit data to your OPM Human Capital Officer.

Additional Information

For additional information, agency Chief Human Capital Officers and/or Human Resources Directors should contact their assigned OPM Human Capital Officer. Employees should contact their agency human resources office for assistance.

cc: Chief Human Capital Officers
Human Resources Directors

Attachment

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release August 3, 2010

August 3, 2010

MEMORANDUM FOR THE ASSISTANT TO THE PRESIDENT AND CHIEF OF STAFF
THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Freeze on Discretionary Awards, Bonuses, and Similar Payments for Federal Political Appointees

At a time when so many American families are struggling to make ends meet, I am committed to making sure the Federal Government is spending the taxpayers' money wisely and carefully, and cutting costs wherever possible. I am committed to ending programs that do not work, streamlining those that do, and bringing a new responsibility for stewardship of tax dollars. Like households and businesses across the country, the Federal Government is tightening its belt. This effort began during my first days in office, when I froze the salaries of the senior members of my White House Staff.

As a next step in this effort, I direct you to suspend cash awards, quality step increases, bonuses, and similar discretionary payments or salary adjustments to any politically appointed Federal employee, commencing immediately, and continuing through the end of Fiscal Year 2011. I also direct the Office of Personnel Management to issue guidance, in consultation with the Office of Management and Budget, to assist departments and agencies in implementing this policy.

In addition to these actions freezing discretionary payments, I have proposed in my Budget for Fiscal Year 2011 a salary freeze for senior political appointees throughout the Federal Government. Unlike the administrative action I have taken today in this memorandum, my proposed salary freeze requires legislation, so it cannot be implemented absent legislative action by the Congress.

I appreciate the hard work of our Federal workforce, and understand how important these payments can be to many workers and their families. Yet like households and businesses across the country, we need to make tough choices about how to spend our funds.

This memorandum shall be carried out to the extent permitted by law and consistent with executive departments' and agencies' legal authorities. Nothing in this memorandum shall be construed to affect payments or salary adjustments for Federal

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employees who are not political appointees. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

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