

Detailed Guidance on Application of Pay Freeze for Certain Senior Political Officials

A. Authority

The pay freeze authority was originally found in section 741 of title VII of division E of the Consolidated Appropriations Act, 2014 (Public Law 113-76, January 17, 2014). Subsequent legislation extended the pay freeze. Section 738 of title VII of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235, December 16, 2014), continued the freeze during calendar year 2015. Section 738 of title VII of Division E of the Consolidated Appropriations Act, 2016 (Public Law 114-113, December 18, 2015) continued the freeze during calendar year 2016.

Section 101 of the Further Continuing and Security Assistance Appropriations Act, 2017 (Public Law 114-254, December 10, 2016) provides continuing appropriations to Federal agencies through April 28, 2017, or the date of enactment of specified appropriations legislation. Under this continuing resolution, the authority and conditions provided in FY 2016 appropriations laws continue to apply. This language means that the freeze on the payable pay rates for certain senior political appointees at 2013 levels (as provided in section 738 of division E of the Consolidated Appropriations Act, 2016, Public Law 114-113, December 18, 2015) continues into calendar year 2017—until April 28, 2017, or the date of enactment of new Financial Services and General Government appropriations legislation. (The pay freeze provision is in section 738 of division E of Public Law 114-113, and that division E is the Financial Services and General Government Appropriations Act, 2016. Until Congress acts on that legislation, we will not know whether the pay freeze continues beyond April 28, 2017.)

Hereafter, all references to “section 738” in this attachment refer to section 738 of title VII of Division E of the Consolidated Appropriations Act, 2016. Please note that, due to the continuation of authority and conditions under the continuing resolution, the references throughout section 738 to “calendar year 2016” are extended through the expiration date of the continuing resolution.

B. Covered Senior Political Appointees

The section 738 pay freeze covers the following senior political appointees (except as otherwise provided in section C below):

1. An employee serving in an Executive Schedule (EX) position, or in a position for which the rate of pay is fixed by statute at an EX rate, and who holds a position under a political appointment;
2. A chief of mission or ambassador at large;
3. A noncareer appointee in the Senior Executive Service (SES) paid at or above the officially established rate for EX-IV (\$161,900 in 2017);

4. A limited term appointee or limited emergency appointee in the SES serving under a political appointment and paid at or above the officially established rate for EX-IV; and
5. Any other type of employee paid at or above the officially established rate for EX-IV who serves under a political appointment.

A covered individual is considered to be holding a “covered position.”

C. Noncovered Individuals

The section 738 pay freeze does not apply to—

- General Schedule employees, including Schedule C employees within that system;
- Foreign Service employees;
- Employees in another pay system (excluding those covered under paragraphs 1 through 4 of section B.) whose position would be classified at or below GS-15 if the position were covered by the General Schedule, whose appointment is made under 5 U.S.C. 3161 (dealing with temporary organizations), or whose appointment is not considered to be political;
- Noncareer SES appointees and other political appointees (excluding those covered under paragraphs 1 and 2 of section B.) who are paid below the officially established rate for EX-IV;
- SES career appointees who receive a Presidential appointment and elect to retain SES pay entitlements under 5 U.S.C. 3392(c) and 5 CFR 317.801; and
- Senior Foreign Service (SFS) members who receive a Presidential appointment to any position in the executive branch and who make an election to retain SFS pay entitlements under section 302(b) of the Foreign Service Act of 1980 (Public Law 96-465).

D. Political Appointees

In determining whether a limited term or limited emergency SES appointment may be a political appointment, an employing agency should consider whether the position is political in character (e.g., established for an individual pending a Presidential appointment subject to Senate confirmation (PAS), for political transition purposes, or for other political purposes of the agency or Administration). All SES limited appointments cleared through the Office of Presidential Personnel are considered political appointments.

Certain agencies may have special political appointment authorities. In determining whether an appointment is political, an employing agency should consider the same factors described in the preceding paragraph. A Presidential appointee is considered a political appointee unless the position is filled by a career appointment.

E. Pay Affected

Section 738 applies to rates of pay—i.e., rates of basic pay including, if applicable, any locality payment under 5 U.S.C. 5304 or any similar supplement under other authority. Section 738 does not address other types of payments in addition to the rate of basic pay.

Note: As stated in a November 18, 2016, joint memorandum to heads of agencies from the Directors of the Office of Management and Budget and the Office of Personnel Management (M-17-07 at <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-07.pdf>), the President's August 3, 2010, memorandum freezing discretionary awards, bonuses, and similar payments for political appointees continues in effect until further notice. Agencies should continue to apply this freeze in accordance with OPM's guidance at <https://www.chcoc.gov/content/guidance-freeze-discretionary-awards-bonuses-and-similar-payments-federal-employees-serving>.

F. Pay Freeze Time Period

1. The pay freeze originally took effect on the first day of the first pay period beginning after the January 17, 2014, date of enactment of the Act. For employees on the standard biweekly pay period cycle, the effective date was January 26, 2014.
2. Under the current continuing resolution, the pay freeze is continuing through April 28, 2017, or the date of enactment of new Financial Services and General Government appropriations legislation. (See section A of this attachment.)
3. The pay freeze applies based on when pay is earned, not when it is paid. A pay increase is considered to be "received" when it takes effect, not when it is reflected in a salary payment.

G. Pay Freeze Rules

1. *General.* An individual who is covered by the section 738 pay freeze may not receive a pay rate increase during the pay freeze time period, except as specifically otherwise allowed under these rules.
2. *Treatment of individuals when increase would otherwise cause pay rate to exceed EX-IV.*

Certain political appointees are not covered by the section 738 pay freeze provision because they are receiving a rate of pay below EX-IV. (See sections B and C of this attachment. Note that the officially established EX-IV rate (i.e., 2017 rate of \$161,900) must be used in applying this rule.) If such an individual receives a pay rate increase while the pay freeze is in effect, that pay rate increase may be applied only to the extent that it does not cause the individual's rate to exceed the EX-IV rate. At the point the individual's pay rate reaches the EX-IV level, the individual becomes covered by the pay freeze (i.e., a covered individual); thus, no additional increase is permitted—unless a permitted exception is applicable.

3. *Increase for individuals who are moved to a position with higher-level duties and pay.* Notwithstanding Rule 1, a covered senior political appointee may receive a pay increase during the pay freeze time period upon authorized movement to a different covered position with higher-level duties and a pre-established higher level or range of pay.

However, any such increase must be based on the rates of pay and applicable pay limitations in effect on December 31, 2013. (See section 738(i).)

Example: On April 2, 2017, a political appointee moves from an EX-III position to an EX-II position. Prior to the movement, due to the section 738 pay freeze, the appointee was receiving a rate of \$165,300 (2013 level for EX-III). Since the Rule 3 conditions are met, the appointee's pay rate may be increased to \$179,700 (2013 level for EX-II).

4. *Initial pay rate for newly appointed individuals.* If an individual is newly appointed to a position covered by the section 738 pay freeze during the pay freeze time period, the individual's initial pay rate must be based on the rates of pay and applicable pay limitations in effect on December 31, 2013, notwithstanding the officially established rates (or ranges) currently in effect for the position. (See section 738(j).)

Example: On January 22, 2017, an individual who had not been serving in the Federal Government begins a Federal political appointment in an EX-III position. Since the Rule 4 conditions are met, the individual's initial pay rate must be set at \$165,300 (2013 level for EX-III).

5. *Determining pay rates upon expiration of the pay freeze.* The day following expiration of the section 738 pay freeze, a covered individual will be entitled to the officially established pay rate or subject to the officially established pay range, as applicable, for his or her position, which will reflect the January 2014 increase, the January 2015 increase, the January 2016 increase, and the January 2017 increase in that officially established rate or range.

Example 1: If the pay freeze expires during 2017, an EX-I official would be receiving a rate of \$199,700 (2013 level for EX-I) at the time of expiration. The officially established rate for EX-I for 2017 is \$207,800 and would become immediately payable to the EX-I official following expiration of the pay freeze.

Example 2: If the pay freeze expires during 2017, a noncareer SES appointee would become immediately subject to the current official SES rate range, with a maximum rate of \$172,100 for those capped at EX-III or \$187,000 for those capped at EX-II. The raising of the applicable range maximum would not result in automatic pay increases for an affected noncareer SES appointee. The employing agency would apply SES pay regulations and agency policies in determining the amount of any future pay rate increases for the noncareer SES appointee.

H. Use of Officially Established Pay Rates for Other Purposes

Since the 2017 officially established rates (or ranges) of pay for the Executive Schedule and other senior political appointee positions are in effect, those officially established rates (or ranges) will be used in determining pay for other employees and pay systems unaffected by the pay freeze.

Accordingly—

- The 2017 cap on locality rates for General Schedule and other employees covered by the locality pay authority in 5 U.S.C. 5304 is the officially established rate for EX-IV in 2017 (i.e., \$161,900).
- The 2017 maximum rate for SES members covered by 5 U.S.C. 5382 and for Senior-Level (SL) and Scientific and Professional (ST) employees covered by 5 U.S.C. 5376 is the officially established rate for EX-III in 2017 (\$172,100)—or for EX-II (\$187,000) if covered by a certified performance appraisal system. (However, for SES, SL or ST employees who are senior political appointees covered by the pay freeze, the payable range of pay will be based on 2013 rates.)
- The 2017 limitation on annual aggregate compensation under 5 U.S.C. 5307 is the officially established rate in 2017 for EX-I (\$207,800) or for the Vice President (\$240,100) for those senior employees covered by that higher cap.
- The 2017 biweekly/annual limitation on premium pay combined with basic pay under 5 U.S.C. 5547 is based on the officially established rate for EX-V in 2017 (\$151,700) (where the EX-V rate exceeds the alternative cap of the applicable maximum GS adjusted rate of basic pay—i.e., for employees stationed in locations outside the United States).
- The 2017 annual limitation on premium pay combined with basic pay under section 1101 of Public Law 110-417, as amended (for certain employees performing specified duties in designated overseas locations) is the officially established rate for the Vice President in 2017 (\$240,100). (See most recent amendment to section 1101 made by section 1137 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328, December 23, 2016), extending the authority for this special limitation through the end of calendar year 2017.)

**Section 738 of title VII of Division E of the Consolidated Appropriations Act, 2016
Public Law 114-113, December 18, 2015 [See End Note.]**

SEC. 738. (a) The Vice President may not receive a pay raise in calendar year 2016, notwithstanding the rate adjustment made under section 104 of title 3, United States Code, or any other provision of law.

(b) An employee serving in an Executive Schedule position, or in a position for which the rate of pay is fixed by statute at an Executive Schedule rate, may not receive a pay rate increase in calendar year 2016, notwithstanding schedule adjustments made under section 5318 of title 5, United States Code, or any other provision of law, except as provided in subsection (g), (h), or (i). This subsection applies only to employees who are holding a position under a political appointment.

(c) A chief of mission or ambassador at large may not receive a pay rate increase in calendar year 2016, notwithstanding section 401 of the Foreign Service Act of 1980 (Public Law 96-465) or any other provision of law, except as provided in subsection (g), (h), or (i).

(d) Notwithstanding sections 5382 and 5383 of title 5, United States Code, a pay rate increase may not be received in calendar year 2016 (except as provided in subsection (g), (h), or (i)) by—

(1) a noncareer appointee in the Senior Executive Service paid a rate of basic pay at or above level IV of the Executive Schedule; or

(2) a limited term appointee or limited emergency appointee in the Senior Executive Service serving under a political appointment and paid a rate of basic pay at or above level IV of the Executive Schedule.

(e) Any employee paid a rate of basic pay (including any locality-based payments under section 5304 of title 5, United States Code, or similar authority) at or above level IV of the Executive Schedule who serves under a political appointment may not receive a pay rate increase in calendar year 2016, notwithstanding any other provision of law, except as provided in subsection (g), (h), or (i). This subsection does not apply to employees in the General Schedule pay system or the Foreign Service pay system, or to employees appointed under section 3161 of title 5, United States Code, or to employees in another pay system whose position would be classified at GS-15 or below if chapter 51 of title 5, United States Code, applied to them.

(f) Nothing in subsections (b) through (e) shall prevent employees who do not serve under a political appointment from receiving pay increases as otherwise provided under applicable law.

(g) A career appointee in the Senior Executive Service who receives a Presidential appointment and who makes an election to retain Senior Executive Service basic pay entitlements under section 3392 of title 5, United States Code, is not subject to this section.

(h) A member of the Senior Foreign Service who receives a Presidential appointment to any position in the executive branch and who makes an election to retain Senior Foreign Service pay entitlements under section 302(b) of the Foreign Service Act of 1980 (Public Law 96-465) is not subject to this section.

(i) Notwithstanding subsections (b) through (e), an employee in a covered position may receive a pay rate increase upon an authorized movement to a different covered position with higher-level duties and a pre-established higher level or range of pay, except that any such increase must be based on the rates of pay and applicable pay limitations in effect on December 31, 2013.

(j) Notwithstanding any other provision of law, for an individual who is newly appointed to a covered position during the period of time subject to this section, the initial pay rate shall be based on the rates of pay and applicable pay limitations in effect on December 31, 2013.

(k) If an employee affected by subsections (b) through (e) is subject to a biweekly pay period that begins in calendar year 2016 but ends in calendar year 2017, the bar on the employee's receipt of pay rate increases shall apply through the end of that pay period.

END NOTE:

Section 101 of the Further Continuing and Security Assistance Appropriations Act, 2017 (Public Law 114-254, December 10, 2016) provides continuing appropriations to Federal agencies through April 28, 2017, or the date of enactment of specified appropriations legislation. Under this continuing resolution, the authority and conditions provided in FY 2016 appropriations laws continue to apply. This language means that the freeze on the payable pay rates for certain senior political appointees at 2013 levels (as provided in section 738 of division E of the Consolidated Appropriations Act, 2016, Public Law 114-113, December 18, 2015) continues into calendar year 2017—until April 28, 2017, or the date of enactment of new Financial Services and General Government appropriations legislation. (The pay freeze provision is in section 738 of division E of Public Law 114-113, and that division E is the Financial Services and General Government Appropriations Act, 2016. Until Congress acts on that legislation, we will not know whether the pay freeze continues beyond April 28, 2017.) Accordingly, due to the continuation of authority and conditions under the continuing resolution, the references throughout section 738 to “calendar year 2016” are extended through the expiration date of the continuing resolution.