

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. Continuing resolutions continued the pay freeze into 2017. The Consolidated Appropriations Act, 2017, continued the pay freeze through the remainder of calendar year 2017. This pay freeze will continue through the last day of the last pay period that begins in calendar year 2017 (i.e., January 6, 2018, for those on the standard biweekly payroll cycle).

Hereafter, all references to “section 738” in this attachment refer to section 738 of title VII of Division E of the Consolidated Appropriations Act, 2017.

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://obamawhitehouse.archives.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 Public Law 113-76. For employees on the standard biweekly pay period cycle, the effective date was January 26, 2014.
2. Unless extended by new legislation, the pay freeze expires at the end of the last pay period that begins in calendar year 2017. For employees on the standard biweekly pay period cycle, that last pay period begins on December 24, 2017, and ends on January 6, 2018.
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 (such as a higher pay tier established in an agency’s SES pay policy). 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 1: 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).

Example 2: On April 30, 2017, a noncareer SES appointee in an agency with a certified appraisal system was reassigned to a position with substantially greater scope and responsibility. The agency's pay policy includes established pay tiers, and the appointee was reassigned from a position in tier 2 to a position in tier 1. Upon reassignment to the higher pay tier, the agency may set the rate of basic pay for SES members in tier 1 positions at any rate within the tier 1 pay range up to the tier 1 maximum of EX-II. Prior to the reassignment, due to the section 738 pay freeze, the appointee was receiving a rate of \$169,500 (previously set within the agency's tier 2 pay range for 2013). Since the Rule 3 conditions are met, the appointee's pay rate may be increased up 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-January 2018 increases in that officially established rate or range.

Example 1: Assume there is a 1 percent increase in the Executive Schedule that takes effect January 7, 2018. At the end of the pay freeze time period (ending on January 6, 2018), 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. Applying the assumed 1 percent increase on January 7, 2018, would result in a new EX-I rate of \$209,900. This new rate would become immediately payable to the EX-I official following expiration of the pay freeze.

Example 2: If the pay freeze expires in January 2018, a noncareer SES appointee would be immediately subject to the official SES rate range for 2018. To determine the range maximum for a noncareer SES member on January 7, 2018 (the day after the section 738 pay freeze expires), the officially established rates must be determined for EX-III, or, if there is a certified performance appraisal system, EX-II. Assume there is a 1 percent increase in Executive Schedule rates that takes effect on January 7, 2018. The EX-III and EX-II rates would be derived by applying the 1 percent increase to the officially established EX rates for 2017, which were \$172,100 for EX-III or \$187,000 for EX-II (even though those rates were not payable to political officials in 2017 due to the pay freeze). Thus, the SES maximum rates effective on January 7, 2018, would be \$173,800 for those subject to an EX-III cap

and \$188,900 for those subject to an EX-II cap (assuming the hypothetical 1 percent increase in January 2018). 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, 2017

SEC. 738. (a) The Vice President may not receive a pay raise in calendar year 2017, 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 2017, 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 2017, 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 2017 (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 2017, 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 2017 but ends in calendar year 2018, the bar on the employee's receipt of pay rate increases shall apply through the end of that pay period.