

Guidance on Application of Pay Freeze for Certain Senior Political Officials

A. Authority

The pay freeze authority was originally found in section 741 of division E of the Consolidated Appropriations Act, 2014 (Public Law 113-76, January 17, 2014). Subsequent legislation, including Continuing Resolutions, extended the pay freeze through calendar year 2018. Section 749 of division D of the Consolidated Appropriations Act, 2019 (Public Law 116-6, February 15, 2019) applied a modified pay freeze to calendar year 2019. This modified pay freeze will continue through the last day of the last pay period that begins in calendar year 2019 (i.e., January 4, 2020, for those on the standard biweekly payroll cycle).

Hereafter, all references to “section 749” in this attachment refer to section 749 of division D of the Consolidated Appropriations Act, 2019.

In this guidance, we will presume that all freeze-covered employees (other than the Vice President) are on the standard biweekly payroll cycle—e.g., that January 6, 2019, is the first day of the first pay period commencing in January 2019.

B. Covered Senior Political Appointees

The section 749 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 official rate for EX-IV (\$166,500 in 2019);
4. A limited term appointee or limited emergency appointee in the SES serving under a political appointment and paid at or above the official rate for EX-IV; and
5. Any other type of employee paid at or above the official 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 749 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 official rate for EX-IV;
- SES career appointees who elect to retain SES basic pay under 5 U.S.C. 3392(c) and 5 CFR 317.801 (for such time as that election is in effect); 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 salary under section 302(b) of the Foreign Service Act of 1980 (Public Law 96-465) (for such time as that election is in effect).

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 749 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 749 does not address other types of payments in addition to the rate of basic pay.

Note: The August 3, 2010, OPM memorandum (CPM 2010-14) implementing a Presidential directive to freeze 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. Application of Special Pay Increase of up to 1.9 Percent

1. Section 749 continues the pay freeze during calendar year 2019, except that it allows for an increase of up to 1.9 percent in the preexisting payable (frozen) rate for covered individuals. The rules for determining the amount of the increase and the effective date of the increase vary by category of employees.

2. The Vice President's payable rate of pay during calendar year 2019 is \$235,100—effective January 1, 2019.
3. The payable rates for freeze-covered Executive Schedule individuals (or an employee paid at an EX rate under law) during calendar year 2019 are shown in the table below. The new payable EX rates are effective on January 6, 2019—the date on which official EX rates were retroactively adjusted.

Executive Schedule (EX) Level	Payable Frozen Annual Rates after 1.9 Percent Increase
EX-I	\$203,500
EX-II	\$183,100
EX-III	\$168,400
EX-IV	\$158,500
EX-V	\$148,500

4. For chiefs of mission and ambassadors at large who are paid at an EX rate, the payable EX rates shown in paragraph 3 above apply.
5. For a freeze-covered SES member who is a political appointee paid at or above the official rate for EX-IV (\$166,500 in 2019) and who was serving as such at the time the EX official rates were adjusted (January 6, 2019), the SES member may receive a single pay rate increase of up to 1.9 percent during calendar year 2019, subject to normally applicable SES pay rules and subject to the pay limitations in effect on December 31, 2013, after those limitations are increased by 1.9 percent. (See section 749(d), 5 U.S.C. 5382-5383, 5 CFR part 534, subpart D, and internal agency policies.)
 - a. The maximum pay limitation for SES members is the rate for EX-II for SES members covered by a performance appraisal system certified under 5 U.S.C. 5307(d) and the rate for EX-III for other SES members. For freeze-covered SES members, the applicable EX-II limitation is \$183,100 and the applicable EX-III limitation is \$168,400. (See table in paragraph 3.)
 - b. A prospective pay increase of up to 1.9 percent may be granted to a freeze-covered SES member under 5 CFR 534.404(b)(1)-(3). (A prospective increase must be authorized before the pay period in which it will take effect.) Any such pay increase would count towards the 12-month rule in § 534.404(c). To the extent this shortens an agency's established executive appraisal and pay adjustment cycle, an exception to the 12-month rule in § 534.404(c)(4)(iv) may be used to get executives' pay back on cycle in January 2020.

- c. Section 749(d) allows for a single increase of up to 1.9 percent for freeze-covered SES members (serving at the time official EX rates are adjusted) “during calendar year 2019, subject to the normally applicable pay rules.” As an alternative to the rule in 5 CFR 534.404(b)(1)-(3), another rule that could be applied is the maintain-relative-position (MRP) rule in 5 CFR 534.404(b)(4). A pay increase under the MRP rule does not count towards the 12-month rule in § 534.404(c). OPM has determined that the MRP rule may be applied to SES members retroactive to January 6, 2019. Thus, it may also be applied to freeze-covered SES members. The official SES rate range (using the applicable official EX rate as the maximum rate) must be used in applying the MRP rule to freeze-covered SES members, even though their payable maximum rate is subject to the pay freeze. First, an agency must determine the relative position of an SES member’s payable rate within the official SES rate range on January 5, 2019. Then, the agency must determine the rate of pay that would maintain that relative position in the new official SES rate range effective on January 6, 2019. Since the official SES minimum and maximum rates are both increasing by approximately 1.4 percent effective on January 6, 2019, application of the MRP rule would result in an increase of approximately 1.4 percent in an SES member’s rate. Since section 749(d) allows for a “single” increase during calendar year 2019, if the MRP rule is applied, the resulting increase would be the only allowed increase.
 - d. The SES pay regulations in 5 CFR 534.404(f)(1) and (2) that allow retroactive pay increases in certain circumstances are not applicable, since those regulations apply to scenarios in which there was a previous determination to adjust an SES member’s pay. For freeze-covered SES members, no such previous determination was possible.
 - e. Section 749(d) provides agencies with authority to grant a pay increase to freeze-covered SES members, but does not require that an increase be granted.
6. For a freeze-covered senior-level (SL) employee who (1) is covered by 5 U.S.C. 5376, (2) is a political appointee paid at or above the official rate for EX-IV (\$166,500 in 2019), and (3) was serving as such at the time the EX official rates were adjusted (January 6, 2019), the SL employee may receive a single pay rate increase of up to 1.9 percent during calendar year 2019, subject to normally applicable SL pay rules and subject to the pay limitations in effect on December 31, 2013, after those limitations are increased by 1.9 percent. (See section 749(e), 5 U.S.C. 5376, 5 CFR part 534, subpart E, and internal agency policies.)
- a. The maximum pay limitation for SL employees is linked to the rate for EX-II for SL employees covered by a certified performance appraisal system and the rate for EX-III for other SL employees. For freeze-covered SL employees, the applicable EX-II limitation is \$183,100 and the applicable EX-III limitation is \$168,400. (See table in paragraph 3.)
 - b. Under 5 U.S.C. 5376(b)(2) and 5 CFR 534.507(a)(1), effective at the beginning of the first applicable pay period commencing on or after the first day of the month

in which an adjustment takes effect under 5 U.S.C. 5303 in the rates of basic pay under the General Schedule, the head of an agency must adjust an SL employee's rate of basic pay by an amount he or she considers appropriate (including a zero adjustment), subject to the regulations in 5 CFR part 534, subpart E (in particular, § 534.507 or, if applicable, § 534.511), and the agency's written procedures. Accordingly, given the retroactive increase in General Schedule rates effective in January 2019, each agency must make an appropriate adjustment in each SL employee's rate of basic pay retroactively to January 6, 2019. This SL pay rule is applicable to freeze-covered SL political appointees; thus, they must receive an appropriate adjustment in their pay rate (not to exceed 1.9 percent, as provided in section 749(e)) effective on January 6, 2019.

- c. Section 749(e) provides agencies with authority to grant a pay increase to freeze-covered SL employees, but does not require that an increase be granted.
7. For a freeze-covered political appointee under any other pay system who is paid at or above the official rate for EX-IV (\$166,500 in 2019) and who was serving as such at the time the EX official rates were adjusted (January 6, 2019), the appointee may receive a single pay rate increase of up to 1.9 percent during calendar year 2019, subject to normally applicable pay rules and subject to the pay limitations in effect on December 31, 2013, after those limitations are increased by 1.9 percent. (See section 749(e) and applicable pay system rules.)
- a. If the pay limitations for a category of employees are linked to EX rates, the new frozen EX rates shown in the table in paragraph 3 would be used.
 - b. Absent an express authority in law, regulation, or mandatory agency policy to provide retroactive pay increases for these freeze-covered senior political appointees, the single increase of 1.9 percent (if any) must be made effective on a prospective basis (i.e., must be authorized before the pay period in which it will take effect).
 - c. Section 749(e) provides agencies with authority to grant a pay increase to freeze-covered employees described in that subsection, but does not require that an increase be granted.

G. Pay Freeze Time Period

1. The senior political appointee 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. The modified pay freeze established under section 749 applies during calendar year 2019; thus, it took effect on the first day of the first pay period commencing on or after January 1, 2019. For employees on the standard biweekly pay period cycle, the modified pay freeze took effect on January 6, 2019.
3. Unless extended by new legislation, the pay freeze expires at the end of the last pay period that begins in calendar year 2019. For employees on the standard biweekly pay period cycle, that last pay period begins on December 22, 2019, and ends on January 4, 2020.
4. 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.

H. Pay Freeze Rules

1. *General.* An individual who is covered by the section 749 pay freeze may not receive a pay rate increase during the pay freeze time period, except as specifically otherwise allowed under section F (above) and the rules in this section H.
2. *Treatment of individuals when increase would otherwise cause pay rate to exceed EX-IV.* Certain political appointees are not covered by the section 749 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 official EX-IV rate (i.e., 2019 rate of \$166,500) 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 based on the normal rules governing pay adjustments for the applicable pay system only to the extent that it does not cause the individual’s rate to exceed the official 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 than the level or range of the position held immediately before the movement. (For example, an agency’s SES pay policy may provide for multiple tiers or pay levels that are linked to specific positions.) However, any such increase must be based on the rates of pay and

applicable pay limitations in effect on December 31, 2013, after those limitations are increased by 1.9 percent. (See section 749(i). Also, for limitations linked to EX rates, see the new frozen EX rates in the table in section F.3.)

Example 1: On April 14, 2019, a political appointee moves from an EX-III position to an EX-II position. Prior to the movement, due to the section 749 pay freeze, the appointee was receiving a rate of \$168,400 (2013 level for EX-III plus 1.9 percent, as shown in the table in section F.3). Since the Rule 3 conditions are met, the appointee's pay rate may be increased to \$183,100 (2013 level for EX-II plus 1.9 percent, as shown in the table in section F.3).

Example 2: On April 28, 2019, 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 749 pay freeze, the appointee was receiving a rate of \$172,720 (previously set within the agency's tier 2 pay range). Since the Rule 3 conditions are met, the appointee's pay rate may be increased up to \$183,100 (2013 level for EX-II plus 1.9 percent, as shown in the table in section F.3).

4. *Initial pay rate for newly appointed individuals.* If an individual is newly appointed to a position covered by the section 749 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, after those limitations are increased by 1.9 percent—notwithstanding the official rates (or ranges) currently in effect for the position. (See section 749(j). Also, for limitations linked to EX rates, see the new frozen EX rates in the table in section F.3.)

Example 1: On February 3, 2019, an individual who had not been serving in the Federal Government began a Federal political appointment in an EX-II position. At the time of the appointment, the frozen EX-II rate had been \$179,700. However, section 749 increased the frozen EX-II rate to \$183,100 retroactive to January 6, 2019 (2013 level for EX-II plus 1.9 percent, as shown in the table in section F.3). Therefore, the individual's pay rate should be retroactively increased to \$183,100 effective on February 3, 2019.

Example 2: On June 9, 2019, 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 \$168,400 (2013 level for EX-III plus 1.9 percent, as shown in the table in section F.3).

I. Use of Official Pay Rates for Other Purposes

The pay freeze applies to the payable rates for covered senior political officials. The freeze does not affect the official rates for the Vice President and the Executive Schedule, which are adjusted under normally applicable law without regard to the pay freeze. While not payable to freeze-covered employees, those official rates continue to be used in establishing pay limitations for employees not covered by the pay freeze.

As a result of section 748 of division D of the Consolidated Appropriations Act, 2019, the official rates for the Vice President and the Executive Schedule increased by 1.4 percent. By law, the official rates for the Vice President and the Executive Schedule must be adjusted effective at the beginning of the first pay period commencing in the month in which an adjustment in the base rates of pay under the General Schedule takes effect under 5 U.S.C. 5303. Since section 748 provided for a 1.4 percent increase in General Schedule base rates effective on the first day of the first pay period beginning in January 2019, the official rates for the Vice President and the Executive Schedule were also increased by 1.4 percent on that same retroactive effective date. (See 3 U.S.C. 104 and 5 U.S.C. 5318.)

Accordingly—

- The 2019 cap on locality rates for General Schedule and other employees covered by the locality pay authority in 5 U.S.C. 5304 is the official rate for EX-IV in 2019 (i.e., \$166,500).
- The 2019 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 official rate for EX-III in 2019 (\$176,900)—or for EX-II (\$192,300) if covered by a certified performance appraisal system. (However, for SES or SL employees who are senior political appointees covered by the pay freeze, the maximum payable rates of pay will be based on 2013 rates plus 1.9 percent. See the table in section F.3.)
- The 2019 limitation on annual aggregate compensation under 5 U.S.C. 5307 is the official rate in 2019 for EX-I (\$213,600) or for the Vice President (\$246,900) for those senior employees covered by that higher cap. These aggregate pay limitations based on official rates apply to employees covered by the section 749 pay freeze even though their rate of basic pay is set or adjusted under frozen pay limitations. (See Section E for information on the types of pay affected by the freeze.)
- The 2019 biweekly/annual limitation on premium pay combined with basic pay under 5 U.S.C. 5547 is based on the official rate for EX-V in 2019 (\$156,000) (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 2019 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 official rate for the Vice President in 2019

(\$246,900). (See most recent amendment to section 1101 made by section 1104 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232, August 13, 2018), extending the authority for this special limitation through the end of calendar year 2019.)

**Section 749 of Title VII of Division D of the Consolidated Appropriations Act, 2019
(Public Law 116-6, February 15, 2019)**

SEC. 749. (a) Notwithstanding the official rate adjusted under section 104 of title 3, United States Code, the rate payable to the Vice President during calendar year 2019 shall be 1.9 percent above the rate payable to the Vice President on December 31, 2018, as limited under section 738 of division E of the Consolidated Appropriations Act, 2018 (Public Law 115–141).

(b) Notwithstanding the official rate adjusted under section 5318 of title 5, United States Code, or any other provision of law, the payable rate for 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, shall be increased by 1.9 percent (relative to the preexisting rate actually payable) at the time the official rate is adjusted in January 2019. Such an employee may receive no other pay increase during calendar year 2019, except as provided in subsection (i).

(c) Notwithstanding section 401 of the Foreign Service Act of 1980 (Public Law 96–465) or any other provision of law, a chief of mission or ambassador at large is subject to subsection (b) in the same manner as other employees who are paid at an Executive Schedule rate.

(d)(1) This subsection applies to—

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

(B) 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 the official rate for level IV of the Executive Schedule.

(2) Notwithstanding sections 5382 and 5383 of title 5, United States Code, an employee described in paragraph (1) who is serving at the time official rates of the Executive Schedule are adjusted may receive a single increase in the employee's pay rate of no more than 1.9 percent during calendar year 2019, subject to the normally applicable pay rules and pay limitations in effect on December 31, 2013, after those pay limitations are increased by 1.9 percent (after applicable rounding). Such an employee may receive no other pay increase during calendar year 2019, except as provided in subsection (i).

(e) Notwithstanding any other provision of law, 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 the official rate for level IV of the Executive Schedule who serves under a political appointment, and who is serving at the time official rates of the Executive Schedule are adjusted, may receive a single increase in the employee's pay rate of no more than 1.9 percent during calendar year 2019, subject to the normally applicable pay rules and pay limitations in effect on December 31, 2013, after those pay limitations are increased by 1.9 percent (after applicable rounding). Such an employee may receive no other pay increase during calendar year 2019, except as provided in subsection (i). This subsection does not apply to employees in the General Schedule pay system or the Foreign Service pay system, 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) This section does not apply to an individual who makes an election to retain Senior Executive Service basic pay under section 3392(c) of title 5, United States Code, for such time as that election is in effect.

(h) This section does not apply to an individual 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) for such time as that election is in effect.

(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 only if that new position has higher-level duties and a pre-established level or range of pay higher than the level or range for the position held immediately before the movement. Any such increase must be based on the rates of pay and applicable pay limitations in effect on December 31, 2013, after those rates and pay limitations are increased by 1.9 percent (after applicable rounding).

(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, after those rates and pay limitations are increased by 1.9 percent (after applicable rounding).

(k) If an employee affected by this section is subject to a biweekly pay period that begins in calendar year 2019 but ends in calendar year 2020, the bar on the employee's receipt of pay rate increases shall apply through the end of that pay period.

(l) For the purpose of this section, the term "covered position" means a position occupied by an employee whose pay is restricted under this section.

(m) This section takes effect on the first day of the first applicable pay period beginning on or after January 1, 2019.