

Guidance on Application of Pay Freeze for Certain Senior Political Officials

A. Authority

The pay freeze authority is found in section 741 of title VII of division E of the Consolidated Appropriations Act, 2014 (Public Law 113-76, January 17, 2014). Hereafter, all references to “section 741” in this attachment refer to the section of law described in the preceding sentence. (The legislative text for section 741 is provided at the end of this guidance.)

B. Covered Individuals

The section 741 pay freeze covers the following individuals (except as otherwise provided in section C below):

1. Vice President; and
2. Senior political appointees, defined as—
 - a. 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;
 - b. A chief of mission or ambassador at large;
 - c. A noncareer appointee in the Senior Executive Service (SES) paid at or above the officially established rate for EX-IV (\$157,100 in 2014);
 - d. 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
 - e. 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 741 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 a through d of section B.2.) 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 a and b of section B.2.) 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 741 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 741 does not address other types of payments in addition to the rate of basic pay.

Note: As stated in a November 1, 2013, joint memorandum to heads of agencies from the Directors of the Office of Management and Budget and the Office of Personnel Management (M-14-02), 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 <http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=3060>.

F. Pay Freeze Time Period

1. The pay freeze under section 741 takes effect on the first day of the first pay period beginning after the date of enactment of the Consolidated Appropriations Act, 2014. For employees on the standard biweekly pay period cycle, the effective date is January 26, 2014.
2. The pay freeze expires at the end of the last pay period that begins in calendar year 2014. For employees on the standard biweekly pay period cycle, that last pay period begins on December 28, 2014, and ends on January 10, 2015.

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 741 pay freeze may not receive a pay rate increase during the pay freeze time period, except as specifically otherwise allowed under these rules.
2. *Validity of pay rates adjusted before January 17, 2014.* Any pay increases that took effect during the period from January 1, 2014, through January 16, 2014, were valid at the time, and the resulting increased pay rates are valid through the end of the pay period during which the pay freeze law was enacted. Affected individuals have no liability or requirement to repay those valid payments.
3. *Determining pay rates effective on January 26, 2014.*

Effective on the first day of the first pay period following the January 17, 2014, date of enactment, pay rates for covered individuals must be reduced to the level that would have applied if the pay freeze provision had been in effect on January 1, 2014. As noted above, that effective date is January 26, 2014, for employees on the standard biweekly payroll cycle. Generally, this means that each covered employee’s pay rate will be reduced on the effective date (normally January 26) to the 2013 rate in effect on December 31, 2013. (See Examples 1 and 2 under this rule.)

However, if a covered individual moved to a different covered position with higher-level duties and a pre-established higher level or range of pay during the period in January before the effective date of the freeze, the pay increase received will be recomputed using 2013 rates and applied prospectively beginning on the effective date of the freeze (normally January 26). (See Example 3 under this rule.)

In addition, if an individual was newly appointed to a covered position during the period in January before the effective date of the freeze, such an individual’s initial pay rate was set using 2014 rates. Also, that individual would not have had a Federal pay rate on December 31, 2013. If the pay freeze had been in effect on January 1, 2014, the individual’s initial pay rate would have been established based on 2013 rates; therefore, it will be reset at the 2013 level beginning on the effective date of the freeze (normally January 26). (See Example 4 under this rule.)

Example 1: On January 12, 2014, an EX-I official’s pay rate increased from \$199,700 (2013 level) to \$201,700 (2014 level). The section 741 pay freeze subsequently became effective on January 26, 2014. If the pay freeze had been effective on January 1, 2014, the official would not have received a pay increase to the 2014 rate for EX-I; the official’s rate would have remained at the rate in effect on December 31, 2013, which was \$199,700. Thus, effective on January 26, 2014, the

official's pay rate is reset to \$199,700. The official is entitled to be paid the higher 2014 rate only for the January 12-25 pay period.

Example 2: On January 12, 2014, an agency increased a noncareer SES member's pay rate by 2 percent from \$159,500 to \$162,690. The section 741 pay freeze subsequently became effective on January 26, 2014. The individual's pay rate was above the EX-IV rate and thus the pay freeze is applicable. If the pay freeze had been effective on January 1, 2014, the noncareer SES member would not have received a pay increase on January 12; the noncareer SES member's pay rate would have remained at the rate in effect on December 31, 2013, which was \$159,500. Thus, effective on January 26, 2014, the noncareer SES member's pay rate is reset to \$159,500. The noncareer SES member is entitled to be paid the higher rate of \$162,690 only for the January 12-25 pay period.

Example 3: On January 12, 2014, a political appointee moved from an EX-III position to an EX-II position. The Executive Schedule rates were officially adjusted on January 12 and, based on the law in effect at that time, the official's pay rate increased from an EX-III rate of \$165,300 (2013 level) to an EX-II rate of \$181,500 (2014 level). The section 741 pay freeze subsequently became effective on January 26, 2014. The official will remain at the EX-II level. However, on January 26, the official's pay rate is reset at \$179,700 (2013 EX-II rate), since that is the rate that would have applied to the official if the pay freeze had taken effect on January 1. (In effect, Rule 5 is applied to the period before January 26 for the purpose of setting the pay rate that will apply prospectively beginning on January 26.)

Example 4: On January 15, 2014, an individual who had not been serving in the Federal Government begins a Federal appointment in an EX-III position. At that time, based on the January 12 pay rate adjustment, the EX-III rate in effect was \$167,000 (2014 level). The section 741 pay freeze subsequently became effective on January 26, 2014. If the pay freeze had been in effect on January 1, 2014, the individual's initial pay rate would have been fixed at \$165,300 (2013 level for EX-III). Accordingly, the individual's pay rate is reset at \$165,300 beginning on January 26, 2014. (In effect, Rule 6 is applied to the period before January 26 for the purpose of setting the pay rate that will apply prospectively beginning on January 26.)

4. *Treatment of individuals when increase would otherwise cause pay rate to exceed EX-IV.*

Certain covered individuals are not covered by the section 741 pay freeze provision, since 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., 2014 rate of \$157,100) 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. (See Example 1 under this rule.)

If an individual's pay rate was below EX-IV before a January 12, 2014, pay rate increase was applied, and the increase caused the employee's pay rate to exceed EX-IV, the higher rate will be valid through the end of the pay period (January 25, 2014). Then, consistent with Rule 3, effective on January 26, 2014, the individual's pay rate must be reset at the officially established rate for EX-IV (\$157,100). (See Example 2 under this rule.)

Example 1: On October 5, 2014, a political appointee under an agency pay system who has a pay rate of \$156,200 (below EX-IV) is granted a pay increase which would normally be 3 percent. However, a 3 percent increase would result in a pay rate of \$160,886, which would exceed the officially established rate for EX-IV (\$157,100). Accordingly, the individual's pay rate is set at \$157,100, at which point the individual becomes covered by the section 741 pay freeze.

Example 2: On January 12, 2014, an agency increased a noncareer SES member's pay rate by 2 percent from \$154,800 to \$157,896. Based on Rules 3 and 4, the individual's pay rate is reduced to \$157,100 (officially established EX-IV rate) beginning on January 26, 2014.

5. *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.

Example: On April 20, 2014, a political appointee moves from an EX-III position to an EX-II position. Prior to the movement, due to the section 741 pay freeze, the appointee was receiving a rate of \$165,300 (2013 level for EX-III). Since the Rule 5 conditions are met, the appointee's pay rate may be increased to \$179,700 (2013 level for EX-II).

6. *Initial pay rate for newly appointed individuals.* If an individual is newly appointed to a position covered by the section 741 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.

Example: On June 25, 2014, an individual who had not been serving in the Federal Government begins a Federal political appointment in an EX-III position. Since the Rule 6 conditions are met, the individual's initial pay rate must set at \$165,300 (2013 level for EX-III).

7. *Determining pay rates upon expiration of the pay freeze.* The day following expiration of the section 741 pay freeze, a covered individual will be entitled to the officially established pay rate (or range) for his or her position, which will reflect both the January

2014 increase and any January 2015 increase in that officially established rate. For employees on the standard biweekly payroll cycle, the section 741 pay freeze expires on January 10, 2015, and the officially established pay rate (or range) will take effect on January 11, 2015.

Example 1: Assume there is a 1 percent increase in Executive Schedule rates that takes effect on January 11, 2015. At the end of the pay freeze time period (ending on January 10, 2015), an EX-I official would still be receiving a rate of \$199,700 (2013 level for EX-I). The officially established rate for EX-I on January 10, 2015, was \$201,700 (2014 level). Applying the assumed 1 percent increase on January 11, 2015, would result in a new EX-I rate of \$203,700, which would become immediately payable to the EX-I official.

Example 2: To determine the range maximum for a noncareer SES member on January 11, 2015 (the day after the section 741 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 11, 2015. The EX-III and EX-II rates would be derived by applying the 1 percent increase to the officially established EX rates for 2014, which were \$167,000 for EX-III and \$181,500 for EX-II (even though these rates were not payable to political appointees in 2014 due to the pay freeze). Thus, the SES maximum rates effective on January 11, 2015, would be \$168,700 for EX-III and \$183,300 for EX-II (assuming the hypothetical 1 percent increase in January 2015). The employing agency would apply SES pay regulations and agency policies in determining the amount of the noncareer SES member's pay rate increase in 2015 (if any) within the parameters of the new officially established range.

H. Use of Officially Established Pay Rates for Other Purposes

Since the 2014 officially established rates (or ranges) of pay for the Vice President, 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 2014 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 2014 (i.e., \$157,100).
- The 2014 maximum rate for SES members 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 2014 (\$167,000)—or for EX-II (\$181,500) 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 2014 limitation on annual aggregate compensation under 5 U.S.C. 5307 is the officially established rate in 2014 for EX-I (\$201,700) or for the Vice President (\$233,000) for those senior employees covered by that higher cap.
- The 2014 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 2014 (\$147,200) (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 2014 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 2014 (\$233,000). (See most recent amendment to section 1101 made by section 1101 of Public Law 113-66, December 26, 2013, extending the authority for this special limitation through the end of calendar year 2014.)

Legislative Text

Section 741 of title VII of division E of the Consolidated Appropriations Act, 2014 (Public Law 113-76, January 17, 2014):

SEC. 741. (a) The Vice President may not receive a pay raise in calendar year 2014, 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 2014, 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 2014, 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 2014 (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 2014, 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 2014 but ends in calendar year 2015, the bar on the employee's receipt of pay rate increases shall apply through the end of that pay period.

(l) An initial or increased pay rate for an individual in a covered position that takes effect in calendar year 2014 prior to enactment of this Act shall be valid only through the end of the pay period during which the enactment took place. Effective on the first day of the next pay period, the individual's pay rate will be set at the rate that would have applied if this section had been in effect on January 1, 2014.