



OFFICE OF THE DIRECTOR

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-1000

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MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: LINDA M. SPRINGER 
Director

Subject: Post-Employment Restrictions

The grandfather provision for determining the applicability of certain post-employment conflict-of-interest restrictions to members of the Senior Executive Service (SES) and other individuals will expire on November 24, 2005. However, beginning November 25, 2005, an employee with a rate of basic pay equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (i.e., \$140,217 in 2005) will continue to be subject to the post-employment restrictions in 18 U.S.C. 207(c).

On October 15, 2004, the Office of Personnel Management (OPM) published interim regulations (69 FR 61143) to implement section 1125(b) of Public Law 108-136 to establish a new salary-based threshold for determining the applicability of certain post-employment conflict-of-interest restrictions under 18 U.S.C. 207(c). (See OPM's regulations at <http://www.opm.gov/fedregis/html/oct04.asp>.) Section 1125(b)(1) amended 18 U.S.C. 207(c)(2)(A)(ii) to require SES members and other individuals who are paid at a rate of basic pay equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule to be subject to the post-employment restrictions in 18 U.S.C. 207(c). The salary-based threshold became effective on January 11, 2004.

The law also included a grandfather provision in section 1125(b)(1) that applied to certain SES members and other individuals for a period of 2 years, through November 24, 2005. If such individuals, on November 23, 2003, were subject to 18 U.S.C. 207(c) and were employed in positions with a rate of basic pay, exclusive of locality payments under 5 U.S.C. 5304, equal to or greater than the rate of basic pay payable for former level 5 of the SES as of that date (i.e., \$134,000), they were subject to the post-employment restrictions in 18 U.S.C. 207(c) until November 24, 2005, without regard to any subsequent changes in position or pay.

Agencies should review the pay of SES members and other individuals who previously were covered by the grandfather provision in section 1125(b)(1) to determine whether they will continue to be subject to the post-employment conflict-of-interest restrictions because their rates of basic pay are equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (i.e., \$140,217 in 2005). If an employee's salary is less than \$140,217 on November 25, 2005, the agency must provide a written notification to the affected employee that he or she is no longer covered by post-employment restrictions. (See 5 CFR 730.104).

Agencies may continue to use the sample notice OPM provided in its memorandum of January 6, 2004 (CPM 2004-1), to notify an SES member or other individual whose rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (i.e., \$140,217 in 2005) that he or she is subject to the post-employment restrictions in 18 U.S.C. 207(c). (Agencies will need to update the salary threshold, as appropriate.) The sample notice is available at http://www.opm.gov/oca/compmemo/2004/2004-01_attach1.asp

For additional guidance, agency Chief Human Capital Officers and Human Resources Directors may contact their assigned OPM Human Capital Officer. Employees should contact their agency human resources offices for assistance. The U.S. Office of Government Ethics regulations on post-employment conflict of interest restrictions are available at http://www.usoge.gov/pages/laws_regs_fedreg_stats/oge_regs/5cfr2641.html. Questions on the requirements in 18 U.S.C. 207(c) should be addressed to the Office of Government Ethics.

cc: Chief Human Capital Officers
Human Resources Directors