

Note: Executive Order 12834 has been revoked.



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

January 11, 1996
DO-96-002

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Stephen D. Potts
Director

SUBJECT: The post-employment pledge required by E.O. 12834

In my DAEOgram of December 19, 1995 (DO-95-045), I stated that this Office would notify you of any information we received from the White House concerning the application of the requirements of Executive Order 12834 to non-career SES appointees not previously subject to the Executive order. As you know, by virtue of Executive Order 12984 (December 28, 1995), the rate of pay of an employee at SES level 4 has now risen to an amount in excess of the rate of pay for an Executive Level V position, thereby raising the question of whether an employee at SES level 4 would be subject to the post employment-requirements of Executive Order 12834. Attached for your information is a copy of a Memorandum that the White House has sent to all heads of agencies and Inspectors General regarding this subject. They asked that we send a copy to all Designated Agency Ethics Officials. The memorandum states that "Executive Order 12834 does not, and never will, apply to employees paid at level 4 of the SES."

Please make sure that the non-career SES level 4 appointees (or their equivalent in other SES type systems) understand the difference to them of the application of the post-employment restrictions in the pledge and the application of the criminal post-employment restrictions of 18 U.S.C. § 207. To that end, we remind you of the time-limited waiver of the application of certain provisions of 18 U.S.C. § 207 to these same individuals set forth in our DAEOgram issued January 4, 1996 (DO-96-001).

Attachment

THE WHITE HOUSE
WASHINGTON
January 5, 1996

MEMORANDUM FOR HEADS OF AGENCIES DESIGNATED AGENCY ETHICS
OFFICIALS INSPECTORS GENERAL

FROM: JACK QUINN
COUNSEL TO THE PRESIDENT

SUBJECT: Interpretation of Executive Order 12834

Consistent with guidance articulated in DAEOgram DO-96-001 issued by the Office of Government Ethics (OGE) regarding 18 U.S.C. 207(c) and (f), the President has directed me to issue this interpretation of the provisions of Executive Order 12834 as they apply to employees paid at level 4 of the Senior Executive Service (SES).

As explained in OGE's recent guidance, Executive Order 12984, signed by President Clinton on December 28, 1995, provided for a pay raise for the SES that will become effective as early as January 7, 1996. Without the action implemented by this memorandum, one effect of the pay raise would be to make the basic rate of pay for SES level 4 greater than the basic rate of pay for level V of the Executive Schedule. As such, employees at SES level 4 would become "senior appointees" for purposes of Executive Order 12834. This result is not, however, one that was intended when the President issued Executive Order 12834.

As OGE has indicated, the post employment restrictions are premised on the theory that more severe restrictions should apply to individuals who have the most senior career and political appointments. As such, and consistent with the definition of "senior employee" in 18 U.S.C. 207, the definition of "senior appointee" in the Executive Order was tied to the rate of basic pay for a position (EL-V), not a particular salary figure. The level of responsibility of particular positions, not the rate of pay, justifies the imposition of post-employment restrictions.

Without the interpretation set forth here, however, a substantial number of individuals in the SES would become "senior employees" without any accretion of duties or responsibilities. This anomaly would occur simply because Congress, for totally unrelated reasons, froze the rate of basic pay for the level of position to which this senior employee status was meant to be tied at the same time that the rate of pay for the subordinates of senior employees was increased.

In view of the foregoing, the President has directed me to confirm that Executive Order 12834 does not, and never will, apply to employees paid at level 4 of the SES.