



July 30, 2024
LA-24-08

LEGAL ADVISORY

TO: Designated Agency Ethics Officials

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SUBJECT: Applying the Senior Employee Post-Government Employment Restrictions to Employees Impacted by the Pay Freeze

The U.S. Office of Government Ethics (OGE) is issuing this Legal Advisory to alert ethics officials to the impact of the current political appointee pay freeze on the application of the senior employee post-Government employment restrictions at 18 U.S.C. § 207(c) to noncareer officials.¹ Noncareer officials can qualify as senior employees based on their rate of basic pay (senior employee pay threshold).² However, recent appropriations bills have frozen the amount of pay that noncareer officials can receive (pay rate cap),³ which in turn can impact whether noncareer officials are senior employees.

In previous years, the pay rate cap exceeded the senior employee pay threshold.⁴ Thus, noncareer officials whose pay was administratively set at the maximum under the pay rate cap qualified as senior employees. In 2024, however, the pay rate cap is set below the senior employee pay threshold. Specifically, the senior employee pay threshold is currently **\$191,944**

¹ Under this statute, former senior employees are subject to a one-year cooling-off period during which they cannot make, with the intent to influence, communications to and appearances before their former agency on behalf of third parties. *See* 18 U.S.C. § 207(c)(1). *See also* 5 C.F.R. § 2641.204(a); OGE Legal Advisory LA-16-08, at 8 (Sept. 23, 2016). This restriction runs for one year after they cease being a senior employee, not from the termination of Government service, unless the two events occur simultaneously. 5 C.F.R. § 2641.204(d).

² 18 U.S.C. § 207(c)(2)(ii). While employees can also be considered senior employees due to the type of position they hold or the authority under which they were appointed, *see* 18 U.S.C. § 207(c)(2), 5 C.F.R. § 2641.104 (defining “senior employee”), this Legal Advisory focuses on employees who are considered senior employees solely due to their rate of basic pay. The senior employee pay threshold is adjusted annually. *See, e.g.*, OGE Legal Advisory LA-24-01 at 1-2 (Jan. 4, 2024). For purposes of this pay threshold, “rate of basic pay” does not include locality-based adjustments or additional pay such as bonuses, awards, and various allowances. *See* OGE Legal Advisory LA-16-08, at 7.

³ *See, e.g.*, Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. E, § 747, 136 Stat. 4459, 4716; Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. B, § 747, 138 Stat. 460, 585; *see also* Office of Personnel Mgmt., CPM 2023-23, attach. (Dec. 21, 2023) (summarizing the pay freeze).

⁴ For example, in 2023, the senior employee pay threshold was \$183,467, and the pay rate cap was \$183,500. *See* OGE Legal Advisory LA-23-01, at 2 (Jan. 5, 2023); Office of Personnel Mgmt., CPM-2022-25, attach. A-3-4 (Dec. 29, 2022).



while the pay rate cap is **\$191,900**.⁵ As a result, noncareer officials whose pay is administratively set at the maximum under the pay rate cap are not senior employees for 2024. However, if they were senior employees due to their rate of basic pay in 2023, they are currently former senior employees subject to the one-year cooling-off period under 18 U.S.C. § 207(c). This one-year period began to run on January 14, 2024, the effective date of the current pay rate cap (i.e. the date their pay rate was set below the senior employee threshold).⁶

Example 1: In 2023, an agency administratively set a noncareer Senior Executive Service (SES) official's pay at \$183,500, the pay rate cap for 2023. Because their pay exceeded the senior employee pay threshold for 2023 (\$183,467), the official was a senior employee in 2023. On January 14, 2024, the agency administratively increased the official's pay to \$191,900, the pay rate cap for 2024. Because their pay does not exceed the senior employee pay threshold for 2024 (\$191,944), the official is no longer a senior employee. However, they have continuing restrictions as a former senior employee that will run through January 14, 2025.

Example 2: The noncareer SES official from Example 1 leaves Government service on August 14, 2024. Because they became a former senior employee on January 14, 2024, the official has only five months remaining on their 18 U.S.C. § 207(c) restriction.

This same analysis applies to employees who fall out of senior employee status due to annual changes to the senior employee pay threshold or because of a change to their rate of basic pay. These employees are considered former senior employees who are subject to the one-year cooling-off period under 18 U.S.C. § 207(c) beginning on the date that their rate of basic pay falls below the senior employee pay threshold.

In order to provide appropriate counseling on the applicable post-Government employment restrictions, ethics officials should confirm that an individual's rate of basic pay did not exceed the senior employee pay threshold during their last year of service. Ethics officials with questions about this guidance can contact their OGE Desk Officer.

⁵ See OGE Legal Advisory LA-24-01, at 1-2; Office of Personnel Mgmt., CPM 2023-23, attach. 4-5 (explaining the pay freeze application and rules); Office of Personnel Mgmt., CPM 2024-09 (Apr. 23, 2024) (explaining the pay freeze was extended through January 11, 2025).

⁶ In addition to the restrictions at 18 U.S.C. § 207(c), noncareer SES officials who are covered by this pay freeze and who have also signed the ethics pledge contained in Executive Order 13989 (the Pledge) are subject to additional restrictions outlined in paragraphs 4 and 5 of the Pledge. See Exec. Order No. 13,989, § 1, paras. 4-5, 86 Fed. Reg. 7,029, 7,029-30 (Jan. 20, 2021) (revolving door bans applicable to appointees covered by the restrictions at 18 U.S.C. § 207(c)). The restriction periods under these paragraphs begin to run at the same time that the employee's cooling-off period under § 207(c) begins. See OGE Legal Advisory LA-22-07, at 3 n.12 (Nov. 14, 2022).