



United States
Office of Government Ethics
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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Walter M. Shaub, Jr., Director

SUBJECT: SUMMARY OF THE PROVISIONS OF THE 2013 APPROPRIATIONS ACT THAT AFFECT THE EXECUTIVE BRANCH ETHICS PROGRAM

On March 26, 2013, President Obama signed into law the Consolidated and Further Continuing Appropriations Act, 2013 (“Continuing Resolution”).¹ While primarily focused on making consolidated appropriations and further continuing appropriations for the fiscal year ending September 30, 2013, the law also includes provisions that affect the Executive Branch ethics program. A brief summary of two provisions relevant to the Executive Branch ethics program is provided for your information.

I. Agency Conference Notification and Reporting Requirements

The Continuing Resolution includes new notification and reporting requirements for agencies that hold a conference during fiscal year 2013.² For a conference that costs more than \$20,000, the law requires that, within 15 days of the date of the conference, the agency head notify the Inspector General, or senior ethics official for any agency without an Inspector General, of the date, location, and number of employees attending such conference. In addition, the agency head must submit an annual report to the Inspector General, or senior ethics official for any agency without an Inspector General, regarding the costs and contracting procedures related to each conference that costs more than \$100,000. The annual report must include the following information:

- A description of the conference’s purpose;
- The number of participants attending the conference;
- A detailed statement of the costs to the United States Government, including the cost of food, beverages, audio-visual services, and travel expenses to and from the conference;

¹ Pub. L. No. 113-6, 127 Stat. 198 (2013).

² See Pub. L. No. 113-6, 127 Stat. 198, 434 (2013).

- A discussion of the methodology used to determine which costs relate to the conference; and
- A description of the contracting procedures used, including whether contracts were awarded on a competitive basis and a discussion of any cost comparison conducted by the departmental component or office in evaluating potential contractors for the conference.

The Continuing Resolution also provides that none of the funds made available in this or any other appropriations act may be used for travel and conference activities that are not in compliance with Office of Management and Budget Memorandum M-12-12, dated May 11, 2012. This memorandum, along with numerous Federal acquisition, fiscal, and ethics laws and regulations that apply to the issues raised by a conference in which the Federal government participates, is discussed in OGE's recently revised version of "A Collection of Federal Resources Relating to Conferences." In order to remain current between revisions, OGE will post new substantive resources as Addenda to the guide. The most recent additions, including the conference reporting provisions under the Continuing Resolution, can be found on the OGE website at: <http://www.oge.gov/Program-Management/Program-Management-Resources/Ethics-Community/Ethics-Community/>.

II. Pay-Level Thresholds of Ethics Provisions Remain at 2011 Levels through December 31, 2013

The Continuing Resolution includes a provision extending the civilian pay freeze for federal employees through December 31, 2013.³ As a result, the statutory pay-level thresholds for certain purposes under either the Ethics in Government Act (EIGA) or 18 U.S.C. § 207(c) will remain at 2011 levels through December 31, 2013, as set forth below:

- The statutory threshold to determine which officers and employees must file public financial disclosure reports under title I of the EIGA, *see* 5 U.S.C. app. § 101(f)(3), is 120% of the minimum rate of the basic pay for grade GS-15 of the General Schedule. That level will continue to be \$119,553.60.
- The statutory threshold to determine which employees are subject to the post-employment conflict of interest restrictions of 18 U.S.C. § 207(c)(1) is provided at 18 U.S.C. § 207(c)(2)(ii). That threshold level, which is 86.5% of the annual rate of basic pay for level II of the Executive Schedule, will continue to be \$155,440.50.
- Title V of EIGA, *see* 5 U.S.C. app. § 501(a), sets forth outside employment and outside earned income restrictions for certain covered noncareer employees, barring them from earning in any calendar year outside earned income that exceeds 15% of the annual rate of basic pay for level II of the Executive Schedule. Both section 501(a) and OGE's regulation at 5 C.F.R. § 2636.304 require the use of the Executive Schedule pay level in effect on January 1 of the year in consideration. Effective January 1, 2013, 15% of the annual rate of basic pay for level II of the Executive Schedule will continue to be \$26,955.00.

³ *See* Pub. L. No. 113-6, 127 Stat. 198, 414-415 (2013).

OGE brings the above information to your attention as part of our initiative to keep the ethics community apprised of relevant legislative activity. If you would like to discuss this Legal Advisory or other legislative matters, please contact OGE's Program Counsel, Shelley Finlayson at (202) 482-9314.