

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Walter M. Shaub, Jr.
Director

SUBJECT: Effect of Pay Adjustments on Ethics Provisions for Calendar Year 2017

This Legal Advisory updates the three statutory pay-level thresholds for certain purposes under either the Ethics in Government Act, 5 U.S.C. app. § 101 *et seq.*, or 18 U.S.C. § 207(c) for calendar year 2017.

The President signed Executive Order 13756 on December 27, 2016, adjusting the 2017 pay schedules for certain Federal civilian employees, effective on the first day of the first applicable pay period beginning on or after January 1, 2017.

The Further Continuing and Security Assistance Appropriations Act, 2017, which was enacted on December 10, 2016, continues the pay rate freeze in calendar year 2017 for certain senior political officials, including those serving in Executive Level positions.¹ Consistent with Office of Personnel Management guidance, the officially established rates of pay for the Executive Schedule remain in effect regardless of the pay freeze.² As such, OGE's threshold calculation guidance below reflects the official established rates of pay for level II of the Executive Schedule.

¹ The pay rates for these officials were frozen pursuant to the Consolidated Appropriations Act, 2016. They were frozen for the same officials pursuant to the Consolidated and Further Continuing Appropriations Act, 2015, and the Consolidated Appropriations Act, 2014.

² Office of Personnel Mgmt., CPM 2016-20, Memorandum for Heads of Executive Departments and Agencies, January 2017 Pay Adjustments (2016), *available at* <https://www.chcoc.gov/content/january-2017-pay-adjustments>.

The following threshold levels will rise for calendar year 2017:

- 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)(A)(ii). That threshold level is “equal to or greater than 86.5 percent of the rate of basic pay for level II of the Executive Schedule.” Effective January 8, 2017, that threshold will be \$161,755.00.³
- The statutory threshold to determine which officers and employees must file public financial disclosure reports under title I of the Ethics in Government Act, 5 U.S.C. app. § 101(f)(3), “is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule.”⁴ Effective January 8, 2017, that threshold will be \$124,406.40.
- Title V of the Ethics in Government Act, 5 U.S.C. app. § 501(a), sets forth outside employment and outside earned income restrictions for certain covered noncareer employees,⁵ barring them from earning in any calendar year outside earned income “which exceeds 15 percent 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(a) require the use of the Executive pay level in effect on January 1 of the year in consideration. As of January 1, 2017, the annual rate of basic pay for level II of the Executive Schedule was \$185,100.00. Fifteen percent of that rate of basic pay is \$27,765.00.

³ For the purpose of determining whether an employee’s pay exceeds this threshold, 18 U.S.C. § 207(c) requires the use of the employee’s basic rate of pay, excluding locality-based pay adjustments or additional pay such as bonuses, awards, and various allowances. For example, the rate of basic pay for a GS-15, Step 5, effective on the first day of the first pay period beginning on or after January 1, 2017, is \$117,496.00.

⁴ Note that the term “minimum rate of basic pay” differs from the rate of basic pay. For example, the minimum rate of basic pay for employees in the Senior Executive Service (SES) and in Senior-Level (SL) and Scientific or Professional (ST) positions will be \$124,406.40 on January 8, 2017, and therefore they are required to file public financial disclosure reports. The minimum rate of basic pay for all GS-15 employees will be \$103,672.00 on January 8, 2017; consequently, they do not have to file public financial disclosure reports even if their rate of basic pay exceeds \$124,406.40.

⁵ The same threshold for determining who must file public financial disclosure reports (\$124,406.40) also determines, in part, whether an individual is a “covered noncareer employee” for the purposes of the statute and the outside earned income and employment restrictions of 5 C.F.R. § 2636.303.