

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 2016

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 2016.

The President signed Executive Order 13715 on December 18, 2015, adjusting the 2016 pay schedules for certain Federal civilian employees, effective on the first day of the first applicable pay period beginning on or after January 1, 2016.

The Consolidated Appropriations Act, 2016, which was enacted on December 18, 2015, prospectively freezes pay rates in calendar year 2016 for certain senior political officials, including those serving in Executive Level positions. The pay rates for the same officials were also frozen pursuant to the Consolidated and Further Continuing Appropriations Act, 2015, and the Consolidated Appropriations Act, 2014. 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.¹ As such, OGE's threshold calculation guidance below reflects the official established rates of pay for level II of the Executive Schedule.

¹ Office of Personnel Mgmt., CPM 2015-14, Memorandum for Heads of Executive Departments and Agencies, January 2016 Pay Adjustments (2015), *available at* <https://www.chcoc.gov/content/january-2016-pay-adjustments-0>.

The following threshold levels will rise for calendar year 2016:

- 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 10, 2016, that level will be \$160,111.50.²
- 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, 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, 2016, 15 percent of the annual rate of basic pay for level II of the Executive Schedule is \$27,495.00.
- 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.”³ Effective January 10, 2016, that level will be \$123,175.20.

² 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 8, effective on the first day of the first pay period beginning on or after January 1, 2016, is \$126,600.

³ 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 \$123,175.20, and the minimum rate of basic pay for all GS-15 employees will be \$102,646 on January 10, 2016.