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February 8, 2011
LA-11-01

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick, Director

SUBJECT: EFFECT OF THE FREEZE ON PAY ADJUSTMENTS ON ETHICS
PROVISIONS FOR CALENDAR YEAR 2011

This Legal Advisory updates the three statutory pay-level thresholds for certain purposes under either the Ethics in Government Act (Ethics Act) or 18 U.S.C. § 207(c) for calendar year 2011.

This year, the following two threshold levels will remain the same as last year because President Obama signed legislation on December 22, 2010, to prohibit statutory pay adjustments for most Federal civilian employees:

- The statutory threshold to determine which officers and employees must file public financial disclosure reports under title I of the Ethics Act, *see* 5 U.S.C. app. § 101(f)(6), is 120% of the minimum rate of the basic pay for grade GS-15 of the General Schedule. For calendar year 2011, 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 for calendar year 2011.

See section 147 of the Continuing Appropriations Act, 2011 (Pub. L. 111-242, September 30, 2010), as amended by section 1(a) of the Continuing Appropriations and Surface Transportation Extensions Act, 2011 (Pub. L. 111-322).

The third threshold level will rise for calendar year 2011, however:

- Title V of the Ethics Act, *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 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 require the use of the Executive Schedule pay

level in effect on January 1 of the year in consideration. Effective January 1, 2011, 15% of the annual rate of basic pay for level II of the Executive Schedule is \$26,955.00.

This amount of \$26,955.00 is greater than the amount of \$26,550.00 that OGE identified in January 2010 as equivalent to 15% of the annual rate of basic pay for level II of the Executive Schedule. The previous amount of \$26,550.00 represented 15% of the annual rate of basic pay for level II of the Executive Schedule that was in effect as of January 1, 2010. Later in January 2010, a cost of living increase became effective for most Federal civilian employees. The new amount of \$26,955.00 takes into account that January 2010 increase.