



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

June 6, 1996
DO-96-030

MEMORANDUM

TO: Heads of Agencies, Designated Agency Ethics Officials and Inspectors General

FROM: Stephen D. Potts
Director

SUBJECT: Extension of Waiver of 18 U.S.C. § 207(c) and (f)

By memorandum to Heads of Agencies, Designated Agency Ethics Officials, and Inspectors General dated January 4, 1996 (DO-96-001), I granted a temporary waiver from the post-employment restrictions at 18 U.S.C. § 207(c) and (f). As a result of this waiver, individuals terminating certain "senior employee" positions before July 1, 1996, are not covered by these two restrictions. On April 1, as required by 5 C.F.R. § 2641.201(d)(4), the Office of Government Ethics (OGE) published notice in the Federal Register of the waiver's July 1 revocation date. See 61 Fed. Reg. 14326 (April 1, 1996).

I have now determined that it is appropriate to extend the temporary waiver so that it will remain effective through October 31, 1996, or until the effective date of any remedial legislation, whichever occurs earlier. OGE published notice of this extension in today's issue of the Federal Register. See 61 Fed. Reg. 28908 (June 6, 1996), [copy](#) attached. Today's issuance also gives advance notice, in accordance with § 2641.201(d)(4), of the extended waiver's future revocation.

BACKGROUND

The President signed Executive Order 12984 on December 28, 1995. It increased the rate of basic pay for most employees in Senior Executive Service (SES) positions and resulted in a pay increase for similar positions in some other pay systems. However, as has been the case for several years, the rates of pay for Executive Schedule positions did not change. As a result of the Executive order, the six rates of pay for the SES (ES rates) now range from \$94,800 for ES-1 to \$115,700 for ES-6. Significantly, the pay increase caused the rate of basic pay for an ES-4 -- now \$109,400 -- to exceed the \$108,200 rate of basic pay for level V of the Executive Schedule (EL-V).

Employees occupying positions for which the rate of basic pay is equal to or greater than EL-V are "senior employees" subject to the one-year "cooling-off" restriction of 18 U.S.C. § 207(c). See 18 U.S.C. § 207(c)(2)(A)(ii). Moreover, these individuals are subject to 18 U.S.C. § 207(f), the one-year ban on providing certain assistance to foreign governments or foreign political parties, since that restriction applies, inter alia, to "[a]ny person who is subject to the restrictions contained in subsection (c)" of section 207. Absent the waiver, the pay raise would have caused

sections 207(c) and 207(f) to become immediately applicable to a large number of employees who would not previously have been subject to those restrictions upon terminating their positions.

As I explained in my January 4 memorandum, I determined that a temporary waiver was warranted due to the lack of notice to affected employees, the significant nature of the restrictions imposed, and the absence of any commensurate expansion of official duties. I also expressed my intention at that time to pursue a legislative remedy that would "take into consideration the effect of pay compression on the applicability of post-employment restrictions." As discussed more fully below, it is my view that our legislative initiative has progressed sufficiently to warrant the extension of the temporary waiver for up to four months.

Effective today, the waiver is extended through October 31, 1996, or until the effective date of any remedial legislation, whichever occurs earlier. The waiver continues to apply to individuals whose rate of basic pay on December 28, 1995, was less than that payable for EL-V and whose rate of basic pay would not have equaled or exceeded that threshold but for the pay raise effected by Executive Order 12984. As clarified in today's Federal Register notice, the waiver also applies to individuals assigned a rate of basic pay during the waiver period that would not have equaled or exceeded the EL-V level but for Executive Order 12984. Thus, for example, the waiver applies to an individual who was an ES-3 on February 1, 1996, but who became an ES-4 the next day. Finally, the waiver also covers individuals whose rate of basic pay is caused during this period to equal or exceed the EL-V threshold by virtue of pay adjustments tied to Executive Order 12984, including adjustments made pursuant to Executive order, statute, or in accordance with administrative procedures.

STATUS OF LEGISLATIVE PROPOSAL

A bill to reauthorize OGE, H.R. 3235, was passed by the U.S. House of Representatives on June 4, 1996. It contains a provision that would amend 18 U.S.C. § 207(c)(2)(A)(ii) to replace the current EL-V threshold for "senior employee" status. As proposed, the new threshold level would be the rate of basic pay (exclusive of locality pay) for ES-5, currently \$114,000.⁽¹⁾ As we are hopeful that this legislative initiative will prove successful, we ask that departments and agencies refrain until late summer from submitting requests for individual waivers for senior employee positions covered by the current waiver.

(1) Should this new threshold become law, individuals occupying Executive Schedule positions will continue to be "senior employees" subject to 18 U.S.C. § 207(c) and (f) by virtue of 18 U.S.C. § 207 (c) (2) (A) (I).