



United States
**Office of
Personnel Management** Washington, DC 20415-0001

CPM 2004-01

January 6, 2004

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: KAY COLES JAMES
Director

Subject: Notification of Changes in Post-Employment Restrictions
Coverage for Members of the Senior Executive Service (SES)

As a follow-up to my memorandum of December 16, 2003, concerning the new performance-based pay system for the Senior Executive Service (SES) ([CPM 2003-19](#)), I am providing additional guidance on the new salary-based threshold for determining the applicability of certain post-employment conflict of interest restrictions to SES members. Under current law, those restrictions, as set forth in 18 U.S.C. 207(c), cover SES members paid at levels ES-5 and ES-6. However, effective on the first day of the first applicable pay period beginning on or after January 1, 2004 (January 11, 2004, for most employees), those restrictions will cover the following categories of employees:

- Any individual whose rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (i.e., equal to or greater than **\$135,805**); and
- Any individual who, as of the day before November 24, 2003 (the date of enactment of Public Law 108-136, the National Defense Authorization Act for Fiscal Year 2004) was paid at a rate of basic pay, exclusive of any applicable locality-based comparability payment, equal to or greater than the rate of basic pay for ES-5 (i.e., \$134,000).

The Administration is considering a technical amendment to the statute. However, unless and until the law is changed, the number of SES members subject to these post-employment restrictions will increase substantially.

The new law requires that an individual who becomes subject to these post-employment restrictions must receive written notification of such coverage. In consultation with the Office of Government Ethics (OGE) and the Department of Justice, the Office of Personnel Management (OPM) will issue regulations regarding this notification requirement as soon as possible. Until

then, **we ask that you identify those SES members who will be covered by these restrictions as of January 11, 2004, and provide notice to them as soon as possible.** We have attached sample notices which you may use for this purpose.

In addition, agencies should document such post-employment restrictions coverage for affected SES members using remarks code "M97" on the SF-50 effecting their conversion to the new SES pay system. Additional guidance on processing the personnel actions necessary to convert all SES members to the new SES pay-for-performance system will be issued by OPM in the near future.

For additional guidance, agency Chief Human Capital Officers and Human Resources Directors should contact the Center for Leadership & Executive Resources Policy on (202) 606-1050. Questions from agencies' legal counsel should be directed to Mark A. Robbins, OPM's General Counsel, at (202) 606-1700. Staff inquiries should be referred to the appropriate OPM Human Capital Officer.

cc: President's Management Council
Chief Human Capital Officers
Human Resources Directors

SAMPLE NOTICES OF POST-EMPLOYMENT RESTRICTIONS

[NOTE: These sample notices assume that the first day of the first applicable pay period beginning on or after January 1, 2004, is January 11, 2004.]

Notice for members of the Senior Executive Service (SES) who will become subject to the post-employment restrictions because the individual's rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (\$135,805 in January 2004):

Effective on January 11, 2004, you are subject to the post-employment conflict of interest restrictions as set forth in 18 U.S.C. 207(c) because you serve in what the Office of Government Ethics refers to as a "senior" position. A "senior" position for these purposes is one for which the rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (\$135,805 in January 2004). Your rate of basic pay upon conversion to the new SES pay system in accordance with Sec. 1125(c)(3) of Public Law 108-136 (National Defense Authorization Act for Fiscal Year 2004, November 24, 2003) will exceed \$135,805.

The post-employment restrictions require that for 1 year after service in a "senior" position ends, no former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he or she served in any capacity during the 1-year period prior to ending service in that "senior" position, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he or she seeks official action by that employee. These post-employment restrictions will apply to you for 1 year after your service in a "senior" position as defined above ends. You will be notified of any future changes in coverage under the post-employment restrictions.

For additional information on post-employment restrictions, see:

"Changes in Post-Employment Restrictions Coverage for Members of the Senior Executive Service (SES)" (See <http://www.opm.gov/oca/compmemo/2004/2004-01.asp>.)

"New Standard for Determining 'Senior Employee' Status" at http://www.usoge.gov/pages/whats_new/whats_new_temp/207c_2003.pdf

"Summary of Post-Employment Restrictions of 18 U.S.C. § 207" at http://www.usoge.gov/pages/daeograms/dgr_files/2000/do00006a.pdf

"Understanding the Revolving Door" at http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/pamphlets/phrevdoor_00.pdf

In addition, you may wish to contact the agency's Ethics Officer for further guidance. Mr./Ms. _____ may be reached at _____.

Notice for members of the Senior Executive Service (SES) who are currently subject to post-employment restrictions and who, as of November 23, 2003 (the day before the date of enactment of Public Law 108-136, the National Defense Authorization Act for Fiscal Year 2004), were serving in a position for which the rate of basic pay, exclusive of any applicable locality-based comparability payment, was equal to or greater than the rate of basic pay for ES-5 (i.e., \$134,000):

You will continue to be covered by the 1-year post-employment conflict of interest restrictions as set forth in 18 U.S.C. 207(c) because as of November 23, 2003 (the day before the date of enactment of Public Law 108-136, the National Defense Authorization Act for Fiscal Year 2004), you were serving in a position for which the rate of basic pay, exclusive of any applicable locality-based comparability payment, was equal to or greater than the rate of basic pay for ES-5 (i.e., \$134,000). Consequently, you will be subject to these 1-year post-employment restrictions until at least November 24, 2005, regardless of any changes in position or pay. If you separate from Federal service before that date, the relevant post-employment restrictions provide that, for 1 year after separation, you may not knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which you served in any capacity during the 1-year period prior to separation, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he or she seeks official action by that employee.

If at the end of the extended coverage period (November 24, 2005), you are serving in what the Office of Government Ethics refers to as a “senior” position, you would continue to be subject to those 1-year post-employment restrictions. A “senior” position for these purposes is one for which the rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (\$135,805 in January 2004). These post-employment restrictions would apply to you for 1 year after your service in such a “senior” position ends.

You will be notified of any future changes in coverage under the post-employment restrictions.

For additional information on post-employment restrictions, see:

“Changes in Post-Employment Restrictions Coverage for Members of the Senior Executive Service (SES)” (See <http://www.opm.gov/oca/compmemo/2004/2004-01.asp>.)

“New Standard for Determining ‘Senior Employee’ Status” at http://www.usoge.gov/pages/whats_new/whats_new_temp/207c_2003.pdf

“Summary of Post-Employment Restrictions of 18 U.S.C. § 207” at http://www.usoge.gov/pages/daeograms/dgr_files/2000/do00006a.pdf

“Understanding the Revolving Door” at http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/pamphlets/phrevdoor_00.pdf

In addition, you may wish to contact the agency’s Ethics Officer for further guidance. Mr./Ms. _____ may be reached at _____.