

## Office of Government Ethics

85 x 7 -- 05/20/85

### Letter to a DAEO dated May 20, 1985

You have asked for our determination under section 201(f)(3) of the Ethics in Government Act (the Act) whether certain employees mentioned in your letter of April 30, 1985 should be required to file SF 278's.

The first situation you pose involves two [agency] employees, one of whom serves as Director of a Division, the other as Associate Administrator for Regional Operations. Both employees are GM-15's. You state that the reason these employees are not in a higher classification is that the authority of [agency]1 to fix the compensation for such scientific and administrative personnel at a rate up to GS-18 was terminated by the Civil Service Reform Act of 19782 and that these positions can be established now only by action of the Office of Personnel Management (OPM)3 which has limited them to grades not above GS/GM-15. Their grade, however, according to you, is not indicative of the responsibilities of their positions which are, you say, "of equal classification" to those held by Senior Executive Service (SES) employees.

The second concerns several Public Health Service (PHS) officers who serve as Division Directors or higher at [your agency] but whose pay grade as a "member of a uniformed service" is below 0-7, the minimal grade requirement for filing SF 278's by such personnel. The PHS officers occupy positions, you state, "ordinarily reserved for SES employees."

The query is whether the employees in both situations occupy positions "of equal classification" to those who are required to file under section 201(f)(3). The section, in pertinent part, provides for financial disclosure reports from:

each officer or employee in the executive branch . . . whose position is classified at GS-16 or above of the General Schedule prescribed by section 5332 of title 5, United States Code, or the rate of basic pay for which is fixed (other than under the General Schedule) at a rate equal to or greater than the minimum rate of basic pay fixed for GS-16; each member of a uniformed service

whose pay grade is at or in excess of 0-7 under section 201 of title 37, United States Code; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification. (Emphasis added.)

Parsing the section, we find that the following employees must file SF 278's:

- (1) those whose positions are classified at GS-16 or above under the General Schedule;
- (2) those whose positions have a rate of basic pay fixed under other pay schedules at a rate equal to or greater than the minimum rate of basic pay for GS-16;
- (3) members of the uniformed services whose pay grade is at or in excess of 0-7; and
- (4) those in any other position determined by the Director of OGE to be of equal classification.

In (2) Congress recognized that there are pay schedules other than the General Schedule. Reference in the legislative history was made to the Tennessee Valley Authority, the Foreign Service and the Veterans Administration, among others. S. Rep. No. 170, 95th Cong., 1st Sess. 109-110 (1977).

Category (4), which we have underscored *supra*, was not in S. 555, the precursor to the Act. *Id.* at 188. It adds another group of positions to the filing requirements. To have significance,<sup>4</sup> "any other position" in category 4 must refer to employees not otherwise covered in the preceding categories of the section. The determination as to its coverage is reserved for this Office.

You have stated to us that the two [agency] GM-15 employees and the PHS officers under consideration, although they receive pay below the minimum set for civil and military employees in section 201(f)(3), have responsibilities which are comparable to those at SES levels. We have heretofore held "that it is clear from both the wording of the Statute and legislative history . . . that it is the position and not the individual which controls the public financial disclosure reporting requirements" and that the

determining factor is "the level of an executive branch employee's responsibility rather than amount of pay." Informal Opinion 81 x 3, dated January 23, 1981.

In view of the foregoing, we make the determination under section 201(f)(3) that the employees in question are in positions "of equal classification" to those required to file SF 278's and as such should file SF 278's with your agency.

Sincerely,

David H. Martin  
Director

-----  
**1** Pub. L. No. 95-190, section 11(b) (1977) (42 U.S.C section 300 j-10).

**2** Pub. L. No. 95-454, section 414(a)(2)(A) (1978)

**3** Pub. L. No. 95-454, section 414(a)(2)(B)(a)(1) (1978) (5 U.S.C. section 3104(a)(1)).

**4** It is principle of statutory construction that effect, if possible, must be given to every clause and word of a statute. United States v. Menasche, 348 U.S. 528, 538-9 (1955); Mercantile Nat. Bank v. Langdeau, 371 U.S. 555, 560 (1963).