



United States
Office of Government Ethics
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April 11, 1995
DO-95-019

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Stephen D. Potts, Director

SUBJECT: Confidential financial disclosure and special Government employees serving in a position for more than one year

BACKGROUND

A special Government employee (SGE) is defined at 18 U.S.C. § 202 as an officer or employee who is to perform temporary duties "with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days...." Based on this statutory definition and long-established personnel practice, it is our understanding that an individual is appointed with SGE status for one-year increments, and that for each such increment the agency must estimate whether the appointee will serve not more than 130 days in the following 365 days. If the agency does not formally reappoint an SGE who continues to serve after one year, it must at least redesignate the appointee as an SGE by reestimating the number of days' anticipated service during the following year. See, for example, Office of Government Ethics (OGE) Informal Advisory Letter 81 x 24 (July 23, 1981).

Against that background, the regulation on financial disclosure was written to require that all SGEs who are confidential filers complete a new entrant report not only when they are initially appointed but also upon each reappointment or redesignation as an SGE (5 C.F.R. § 2634.903(b)). This ensures continuous disclosure coverage for SGEs who serve longer than one year, since the separate regulatory requirement to file annual incumbent reports does not apply to them (5 C.F.R. § 2634.903(a)).

TERM APPOINTEES

After publishing the financial disclosure regulation in 1992, we discovered that some SGEs were being appointed to terms of more than one year for service on advisory committees or other similar groups, but not being reappointed or redesignated each year as SGEs with a new estimate of days to be served. In order to ensure that they continue to be covered as confidential filers, we commented in our DAEOgram of October 19, 1992, that these "term" SGEs should file a report

on each anniversary of their original appointment, the same as an SGE who is formally reappointed or redesignated.

That DAEOgram also suggested that we might amend the final regulation to more clearly specify this requirement. We do not now believe, however, that such an amendment is necessary. The regulation explicitly requires SGEs to file a confidential financial disclosure report upon reappointment or redesignation, and agencies should be reappointing or redesignating term SGEs each year on the anniversary of their original appointment, as discussed above.

DUE DATES

Some agencies have indicated to us recently that it is quite cumbersome to collect additional new entrant reports on the anniversary of an SGE's initial appointment, because that date will vary for each SGE. Recognizing this problem, we have no objection if an agency wishes to collect follow-on new entrant reports simultaneously once each year for all its term SGEs or for groups of term SGEs such as specific advisory committees. This flexibility may also help to promote the purpose of confidential financial disclosure reports by aligning their due dates with a particular meeting of an advisory committee. Agencies do not need to seek further specific authorization from OGE for this limited procedural change.

Follow-on new entrant reports of term SGEs should cover the preceding twelve months from the date of each filing, as required by 5 C.F.R. § 2634.908(b). Any resulting gap in continuity between reports is outweighed by the benefits of flexibility with filing dates which this DAEOgram provides for term SGEs.