

**Office of Government Ethics**  
**91 x 16 -- 05/13/91**

**Letter to a Designated Agency Ethics Official**  
**dated May 13, 1991**

Your letter of March 26, 1991, inquired as to the proper method of determining which professional [employees] at [your agency] must file public financial disclosure reports.

Section 101 of the Ethics in Government Act of 1978, as amended by Public Law 101-194, requires public financial disclosure reports from those employees in positions "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." [5 U.S.C. App. 6, § 101(f)(3).] Your letter indicates that certain professional employees are paid under a [specific] pay system that is separate from the General Schedule and that previously you have used a grade equivalent to GS-16 as the filing threshold. However, you are now concerned that if the Federal Employees Pay Comparability Act of 1990 applies, it would require the use of a pay rate equivalent to GS-16 instead of a grade or classification equivalency, with the result that many more professional [employees] would meet the threshold than in the past.

We understand from consultation with the Office of Personnel Management (OPM) that The Federal Employees Pay Comparability Act of 1990 eliminated the GS-16, 17 and 18 classifications under title 5 of the United State Code (and references thereto outside title 5) and replaced them with a new range of rates for positions classified above GS-15 at a rate of basic pay not less than 120% of the minimum rate of basic pay for GS-15. We also understand that this has the effect of changing the references to GS-16 and above in the financial disclosure provisions of the appendix to title 5. See the footnote on page 3 of instructions to the SF 278 (Rev. 1/91).

However, that change does not affect the requirement of the Ethics in Government Act to use a pay rate equivalency in determining who outside the General Schedule meets the threshold for filing public financial disclosure statements. Both prior to

and since the effective date of the Pay Comparability Act, it is the pay rate equivalency, not a grade or classification equivalent to GS-16, which is the touchstone in determining who meets the filing threshold. If, as you indicate, the professional [employees] in question meet this pay rate equivalency, they should be filing public financial disclosure reports. Any relief from the filing requirement would have to come from Congress.

Pursuant to separate statutory language in section 101 of the amended Ethics in Government Act, classification and level of responsibility become relevant criteria when this Office is being asked to determine that employees in positions meeting neither the General Schedule nor the pay rate equivalency threshold must file because they are in other positions of equal classification; however, this does not appear to be the subject of your inquiry.

For those professional [employees] who meet the pay rate equivalency for filing and are therefore required by the current law to file an annual public financial disclosure report by May 15, you may grant a blanket 45-day extension of the due date, and this Office will grant an additional 45-day extension if you so request. Regarding future legislative relief, we would be glad to review any proposals which you might wish to draft as an amendment to the filing requirements of title I of the Ethics in Government Act, as amended.

Your letter also voiced concerns about filing requirements for part-time professionals and requested guidance in how to calculate whether they meet the pay rate threshold. That determination simply requires comparing their annual rate of basic pay to the annual threshold rate.

Sincerely,

Stephen D. Potts  
Director