

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



Preventing Conflicts of Interest
in the Executive Branch

How Alternative Pay Systems Impact Financial Disclosure

Panelists



Elaine Newton, Office of Government
Ethics (OGE)

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and Human Services (HHS)

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National & Community Service (CNCS)

OGE Opinion 81 x 3 (1/23/81)



Based on the wording of the statute and a 1977 Senate Report (S. Rep. No. 95-170, at 110 (1977)), OGE concluded that the level of responsibility is the determining factor in deciding who should file a public report.

Ethics in Government Act

5 U.S.C. app. 101(f)



Persons required to file public financial disclosure reports include individuals who occupy the position of President, Vice President, Postmaster General, Director of OGE, DAEOs, etc.

101(f)(3) lists four categories of positions



- Employees in positions classified above GS-15 of the General Schedule;
- Uniformed service members whose pay grade is 0-7 or above;



- Employees in positions outside the General Schedule for which the rate of basic pay is equal to or greater than 120% of the minimum rate of basic pay payable for GS-15; and
- Employees in any other pay position determined by the Director of OGE to be of equal classification.



Employees in positions outside the
General Schedule

rate of basic pay

equal to or greater than 120% of the
[minimum rate of basic pay] payable
for GS-15

OGE Opinion 81 x 22 (7/20/81)



- OGE stated that the “basic rate of pay” means the lowest step authorized for a position’s pay grade. The opinion explains that the basic rate that an individual receives is GS-16, Step 1 and while a GS-15, Step 7 receives a salary higher, the basic rate of his or her grade is a GS-15 Step 1.

OGE Opinion 98 x 2 (2/11/98)



- OGE reiterated that the term “rate of basic pay” for public financial disclosure purposes means the lowest step or entry level pay authorized for a particular pay grade or range. OGE further stated that it is the pay grade or range that defines the level of responsibility.

Alternate Pay Plans: An HHS Experience

Gretchen H. Weaver

Senior NIH Ethics Counsel

DHHS/OGC/ Ethics Division

Recruit and Retain

Four administratively determined pay plans in use at HHS:

- Senior-Level and Scientific/Professional Positions (ST/SL): \geq 120% GS-15, Step 1 to $<$ \$155,500
- Senior Biomedical Research Service (RS): \geq GS-15, Step 1 to $<$ \$199,700
- Title 42 (AD): \geq GS-13, Step 1 to \$250,000+

NIH Headline News

David Willman, Los Angeles Times, December 7, 2003, at A16, cols. 1, 2, and 5

- “The NIH has shifted many of its high-salaried employees into pay plans with minimums that dip below the threshold”
- “From 1997 through 2002, the number of NIH employees filing public reports...dropped by about 64%”
- “While making it easier for employees to cut consulting deals, the NIH has made it harder for the public to find out about them”

Where secrecy reigns

The Ethics in Government Act has generally required highly paid federal workers to file annual financial disclosure reports that are open to public review. Many National Institutes of Health employees make or exceed the threshold salary of \$102,168. Most of them have been exempted by changes made to their payroll status.

Out of a total of 18,000 NIH employees:

Those making more than \$102,168: 2,259

Those subject to public disclosure of outside income: 127



Sources: NIH records and interviews

Los Angeles Times

Equivalency Determination

NIH-wide review of positions –

- January 2004: 93 “Top 5” employees
Granted February 2004
- May 2004: 504 Additional positions
Granted September 2004 (as to 498)

Today

- ~ 625 filers at NIH
 - 14 categories of positions
 - A few individuals
 - Employees defined as filers (SES, Comm. Corps)
- Periodic Updates to Equivalency Determination
 - Good working relations with OGE
 - Internally challenging to examine agency with 18,000 employees under 28 different management structures continuously being revised.

OGE DAE Ogram, DO-07-029 (8/20/07)



OGE reviewed various alternates to the current approach of determining filing status by defining "rate of basic pay" as the "lowest step or entry level pay authorized for a particular pay grade or range." OGE decided to keep the current approach at this time.



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How Alternative Pay Systems Impact Financial Disclosure

Corporation for National and
Community Service

Wilsie Y. Minor, DAEO

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Mission of the Corporation for National and Community Service

The mission of the Corporation for National and Community Service is to improve lives, strengthen communities, and foster civic engagement through service and volunteering.

The Corporation is the nation's largest grant maker supporting service and volunteering. Through our Senior Corps, AmeriCorps, and Learn and Serve America programs, we provide opportunities for Americans of all ages and backgrounds to express their patriotism while addressing critical community needs.

What We Do

The Corporation for National and Community Service:

- Acts as a catalyst to volunteer organizations that, in turn, deliver much-needed services to communities throughout the country.
- Promotes a healthy, vibrant non-profit volunteer sector.
- Builds character and creates career and educational opportunities through the volunteer experience.
- Develops and cultivates knowledge to enhance the overall success of volunteer and service programs.
- Cultivates the growth of a culture of citizenship and service.

Our History

- **1990: National and Community Service Act of 1990:** Created a new independent federal agency, the Commission on National and Community Service.
- **1992: National Civilian Community Corps (NCCC):** A bipartisan group of Senators drafted legislation to create NCCC as a demonstration program to explore the possibility of using post-Cold War military resources to help solve problems here at home. It was enacted as part of the 1993 Defense Authorization Act.
- **1993: The National and Community Service Trust Act of 1993:** The Corporation for National and Community Service was established. It merged the work and staffs of two predecessor agencies, ACTION and the Commission on National and Community Service.

The Authority for Our Personnel System

The Chief Executive Officer may designate positions, may make appointments, and may determine compensation, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions relating to classification and General Schedule pay rates. *Section 195, National and Community Service Act of 1990, as amended*

2011

Corporation Pay Bands and Salary Ranges

Pay Band	Base Salary	GS Grades
NY-1	\$17,803 - \$45,049	GS 1- ~GS 8/5
NY-2	\$33,978 - \$60,701	~GS 7/1- ~GS 11/7
NY-3	\$50,288-\$95,033	GS 11/1 - ~GS 14/4
NY-4/NX-1	\$84,697 -\$129,521	GS 14/1-~GS 15/10
NX-2	\$129,521- \$155,500*	Executive Level III

*Statutory Cap = Executive Level IV

The statutory threshold to determine which officers and employees must file public financial disclosure reports under title I of the Ethics Act, *see* 5 U.S.C. app. § 101(f)(3), 120% of the minimum rate of the basic pay for grade GS-15 of the General Schedule. For 2011, that level will continue to be \$119,553.60.

SALARY TABLE 2011-GS

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
1	17803	18398	18990	19579	20171	20519	21104	21694	21717	22269
2	20017	20493	21155	21717	21961	22607	23253	23899	24545	25191
3	21840	22568	23296	24024	24752	25480	26208	26936	27664	28392
4	24518	25335	26152	26969	27786	28603	29420	30237	31054	31871
5	27431	28345	29259	30173	31087	32001	32915	33829	34743	35657
6	30577	31596	32615	33634	34653	35672	36691	37710	38729	39748
7	33979	35112	36245	37378	38511	39644	40777	41910	43043	44176
8	37631	38885	40139	41393	42647	43901	45155	46409	47663	48917
9	41563	42948	44333	45718	47103	48488	49873	51258	52643	54028
10	45771	47297	48823	50349	51875	53401	54927	56453	57979	59505
11	50287	51963	53639	55315	56991	58667	60343	62019	63695	65371
12	60274	62283	64292	66301	68310	70319	72328	74337	76346	78355
13	71674	74063	76452	78841	81230	83619	86008	88397	90786	93175
14	84697	87520	90343	93166	95989	98812	101635	104458	107281	110104
15	99628	102949	106270	109591	112912	116233	119554	122875	126196	129517



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