

Equal Classification Requests

The Ethics in Government Act describes various categories of employees who are required to file public financial disclosure reports. In particular, 5 U.S.C. app., § 101(f)(3), lists four categories of positions in the executive branch that are typically filled by employees in executive level positions:

(1) Employees in positions classified above GS-15 of the General Schedule;

(2) 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;

(3) Uniformed service members whose pay grade is O-7 or above; and

(4) Employees in any other position determined by the Director of OGE to be of equal classification.

If an employee's position does not fall within one of the first three categories, but duties of the position nevertheless involve executive responsibilities, you may request that the Director of OGE issue an equal classification determination for that position. In a 2002 advisory letter, OGE listed criteria that should be addressed in such a request. See Office of Government Ethics (OGE) Informal Advisory Letter 02 x 11. We have refined these criteria as described below:

1. Nature of Responsibilities and Duties: The responsibilities and duties of the position must involve executive, policy-making activities, such as those typically undertaken by members of the Senior Executive Service (SES). A position that assists others in these activities is not sufficient.

2. Supervision: The individual must provide substantive direction over other agency employees. The position title alone is not conclusive of whether the incumbent provides substantive direction to other agency employees.

3. Position's Standing in the Agency's Organizational Chart: The request should indicate where the individual's position is in the agency's organizational hierarchy or chart.

4. **Prior Incumbents:** The request should state whether the position has in the past been filled by an employee at a higher pay grade, particularly a member of the SES.

5. **Pay Grade Equivalency:** The agency must provide its own assessment of whether the position has a pay grade equivalency at a higher level, such as a position in the SES, and the basis for that conclusion. The agency should also discuss any attempts to fill the position at a higher level that were unsuccessful because of grade ceiling or other factors.

6. **Actual Pay Level:** The request should explain whether the employee receives pay at the higher end of a grade or band, though the "rate of basic pay" is below the statutory pay threshold. If the pay is below the statutory threshold, the request should also explain whether the employee is nevertheless performing executive level functions.

7. **Other Employees at a Comparable Level:** The request should indicate if there are other employees in the particular pay system that are paid at a comparably high level but who are not public filers, and why the requested position is deemed to be distinguishable from positions held by them.

8. **Scope of Duties and Authority Associated with the Position:** The request should indicate whether the scope of the individual's duties and the authority associated with the position require frequent interaction with high level persons such as the agency head, liaison with private sector executives or contacts with foreign governments.

A request for an equal classification determination should be submitted to OGE in writing. In addition, each request must state the agency's opinion regarding the necessity and appropriateness for designating the incumbent in this position as a public filer. The request should not simply repeat information from a position description or some other similar document nor should the agency submit the position description in place of its own independent analysis.

An agency should seek an equal classification determination only after making certain that the position does not fall into one of the other categories listed under § 101(f)(3). Also, it is possible that the equal classification determination process could be avoided by the thoughtful design of alternative pay systems. With careful attention to creating executive bands within an alternative pay system, the need for equal classification determinations may be minimized.

OGE recognizes that seeking an equal classification determination may require substantial work on the part of both the agencies and OGE. We encourage agencies to consult in advance with OGE regarding the position for which an equal classification determination is being considered.