

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

OGC Has Reviewed

Lawrence Garrett, Esq.  
Office of Personnel Management  
Office of Government Ethics  
1900 E Street N.W. Room 5315  
Washington, D.C. 20415

Dear Mr. Garrett:

Pursuant to the provisions of 18 U.S.C. § 207(d) and implementing regulations promulgated by the Office of Personnel Management, enclosed is a list of "Senior Employees" designated by CIA. These designations have been made after numerous contacts with you and Mr. Davis of your Office and after a review of all CIA positions for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17. This list is suitable for publication in the Federal Register. The incumbents of positions not designated, accordingly, are not subject to the provisions of 18 U.S.C. § 207(b)(ii) and (c).

As you are aware, CIA is exempted from the Classification Act and has established its own pay system. The Agency designations are provided in three distinct categories: personnel paid under the Executive Salary Schedule; personnel paid at rates established by CIA and comparable to that schedule; and personnel whose positions involve significant decision-making or supervisory responsibility and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule. I believe it may well be argued that the second and third categories are to some extent overlapping, at least insofar as CIA is concerned. For example, a CIA employee in the third category whose position warrants payment at a rate equal to or greater than the equivalent of GS-17 is actually paid at a rate equivalent to Executive Level personnel (e.g., the incumbent of a position equivalent to a GS-17 is paid the same as an EP-5). Moreover, it was only through conversations with you that we learned that the Act contemplates a distinction to be made between those categories, since OPM regulations, section 737.25(a)(1), (2) and (b)(1) are entirely misleading on this point, in that no mention is made of an automatic designation of officials who receive pay comparable to that received by Executive Level personnel. Accordingly, CIA had intended to treat all incumbents of positions paid at an equivalent to GS-17 or higher, including those paid at a

rate comparable to Executive Level positions, as Senior Employees only if the criteria of 18 U.S.C. § 207(d)(2) could be met. While I do not intend to dispute your interpretation, I believe that the uniqueness of the CIA pay structure, the ambiguity of the statute, and the language of the OPM regulations have reasonably caused CIA employees paid at an Executive Schedule equivalent to believe that they could not automatically be designated Senior Employees.

In view of the resulting confusion, it is our position that no CIA official listed in category II who left office prior to December 15 should be designated as a Senior Employee (neither of the two statutory Executive Level officials in office on 1 July has left the Agency). Similarly, individuals holding positions designated by this Agency and listed in the enclosure at category III would not be deemed Senior Employees if they leave Government service prior to 15 December, in accordance with your guidance of 21 September.

AT If you have any questions or comments, please contact me or [redacted] However, I trust you will agree that incumbents of positions not listed herein should be exempted, regardless of the concerns that you have previously expressed to [redacted] with respect to the foregoing position. ST

Sincerely,

[redacted]  
Deputy General Counsel ST

DESIGNATION OF SENIOR EMPLOYEES  
CENTRAL INTELLIGENCE AGENCY  
[As of 1 December 1979]

I. Personnel Paid Under the Executive Salary Schedule (as of 1 July 1979)

Director of Central Intelligence  
Deputy Director of Central Intelligence

II. Personnel Paid at Rates on a Scale Comparable to the Executive Schedule

General Counsel  
Inspector General  
Legislative Counsel  
Deputy Director for Administration  
Associate Deputy Director for Administration  
Deputy Director for Operations  
Associate Deputy Director for Operations  
Deputy to the Director of Central Intelligence  
for Resource Management  
Associate Deputy to the Director of Central  
Intelligence for Resource Management  
Deputy to the Director of Central Intelligence  
for Collection Tasking  
Deputy to the Director of Central Intelligence  
for National Foreign Assessment  
Deputy Director of the National Foreign Assessment  
Center  
Chairman, National Intelligence Council  
Special Assistant to the Director of Central  
Intelligence (compartmentation)  
Deputy Director for Science & Technology  
Associate Deputy Director for Science &  
Technology  
Director of Office of Medical Services  
Director of Office of Economic Research

III. Other Designated Senior Employee Positions

Comptroller  
Deputy Comptroller  
Director, Office of Public Affairs  
Deputy Legislative Counsel  
Deputy General Counsel  
Deputy Inspector General

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