

Office of Government Ethics

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Memorandum to a Designated Agency Ethics

Official dated January 23, 1981

It has always been the point of view of this Office that it is clear from both the wording of the statute and the legislative history surrounding Title II of the Ethics in Government Act that it is the position and not the individual which controls the public financial disclosure reporting requirements. Section 201(f) of Title II sets forth those officers and employees of the executive branch required to file. The express language of the section states that covered individuals include:

[E]ach officer or employee in the executive branch . . .
whose position is classified at GS-16 or above of the
General Schedule. . . . (emphasis added).

The legislative history surrounding this particular provision also supports the proposition that the level of an executive branch employee's responsibility, rather than the amount of pay, is the determining factor. S. Rep. No. 170, 95th Cong., 2nd Sess. 109 (1977).

Further support for this interpretation may be found in the requirement that the public financial disclosure form (SF 278) reflects the official position description of the reporting individual and not the grade of the individual. The legislative history surrounding this point indicates that the House Bill (H.R. 1) contained this requirement. The Senate version (S. 555) had no comparable provision. The Senate receded on this issue. Conf. Rep. No. 127, 95th Cong., 2nd Session 72 (1978).

Accordingly, we must conclude that those individuals within your agency detailed to SES positions for a period greater than 60 days must comply with the financial reporting requirements.