

Office of Government Ethics

82 x 3 -- 01/26/82

Letter to a Designated Agency Ethics Official dated January 26, 1982

We have received your letter of January 11, 1982 in which you have requested assistance in clarifying an apparent inconsistency in approach between Part 734 and Part 738, 5 C.F.R., with regard to the meaning of the term "designated agency ethics official."

As you noted in your letter, 5 C.F.R. § 738.202(b) provides in part: "The head of each agency shall appoint an individual to serve as the designated agency ethics official and an individual to serve in an acting capacity in the absence of the primary designated agency ethics official (alternate agency ethics official)." Subsection (a) of § 738.204 provides: "A designated agency ethics official may, if necessary, delegate to one or more deputy ethics officials any of the duties referred to in § 738.203, except for those functions set forth in § 734.604(c)(2) of Part 734 and referred to in § 738.203(b)(3) (certification of nominee statements). A deputy ethics official shall work under the supervision of the designated agency ethics official in carrying out such delegated functions." You stated it seemed clear to you from these sections that each agency has only one designated agency ethics official and that any delegate of such official is to be called a deputy ethics official.

You went on to state, however, that this conclusion is seemingly contradicted by § 734.105(d) which defines "designated agency ethics official" as "officer or employee who is designated by the head of the agency to administer the provisions of Title II of the Act and this part within an agency, or the delegate of such an official" (emphasis added). Your interpretation of this provision is that every person who is a deputy ethics official under § 738.204(a) is a designated agency ethics official. In addition, since the term "delegate" is not restricted to one who has been delegated any particular duties (e.g., reviewing financial disclosure reports), it would, on its face, include even those who have been delegated only limited administrative functions.

Finally, you pointed out that the broad definition of designated agency ethics official in § 734.105(d) also raises

other questions. For example § 734.602(c)(4) requires each agency (singular) to transmit to our Office copies of financial disclosure reports filed by designated agency ethics officials (plural). You have been providing us a copy of the report filed by the primary designated agency ethics official, but not those filed by officials performing delegated functions. You asked whether you were supposed to have provided copies of the reports of every official to whom the primary designated agency ethics official had delegated any function whatsoever.

First, it is our intention that each agency have only one designated agency ethics official. It is that person by virtue of his or her position who must file a public financial disclosure report with this Office. An individual who serves as the alternate and/or a deputy ethics official is not, simply by virtue of that position, required to submit a public financial disclosure report to us. With regard to your observation on the language of § 734.602(c)(4), our intention was that each agency would transmit the reports of its ethics official (singular). The term "officials" as used in that subsection is a typographical error. It should read "official."

In response to your questioning the apparent discrepancy between our regulations in Parts 734 and 738, as you know, Part 734 was written well ahead of Part 738. The definitions used in Part 734 are, on their own terms, for use in Part 734 only. While we had not as yet set forth by regulation the framework of an agency's ethics program, we realized that certain of the public financial disclosure responsibilities would be delegated. Instead of writing "designated agency ethics official or delegate" each time a duty could be delegated, we wrote only the former and added delegate to the definition. In Part 738, we specified which of those responsibilities could not be delegated and made specific reference to the applicable subsection in Part 734. See § 738.203(b)(3) and § 738.204(a).

We hope this has been of assistance to you in drafting your own regulations and appreciate your desire to clarify these apparent discrepancies before proceeding.

Sincerely,

J. Jackson Walter
Director