

**Office of Government Ethics**  
**80 x 3 -- 02/27/80**

**Letter to an Agency Official dated February 27, 1980**

I have reviewed your request for guidance with respect to the interpretation to be given to the applicability of 5 C.F.R. § 737.25 (i) relative to [an officer of your agency].

You have advised that [the officer] is currently serving in the position of Assistant Commissioner and is retiring effective the close of business February 27, 1980. The position of Assistant Commissioner has been designated pursuant to the provisions of 5 C.F.R. § 737.33 as a Senior Employee position effective February 28, 1980.

You have further advised that [your agency] contemplates employing [the officer] in the future as a re-employed annuitant in a position [which is] presently vacant [and] which has not been designated as a Senior Employee position.

Discussions with your staff have revealed that the duties of the position of Assistant Commissioner will remain unchanged and that this position will be filled by a new appointment. The position [in which you wish to re-employ the officer] has no operating responsibilities and that in this regard [the officer] will not take part in any operational responsibilities with regard to his former position. [The officer] will perform staff functions and it is contemplated that he may be called upon to testify before Congress with respect to areas of his expertise relating to his former position.

It is the opinion of this Office that [the officer's] re-employment will not be viewed as a shifting of position as contemplated by 5 C.F.R. § 737.25(i). Nor do we view the position [in which you wish to re-employ him] as meeting the criteria of Senior Employee as set forth in 5 C.F.R. § 737.25. As such, the effective date of Senior Employee designations, February 28, 1980, will have no hearing on [the officer's] status as a re-employed annuitant.

Sincerely,

J. Jackson Walter  
Director