

§ 2641.205

5 CFR Ch. XVI (1–1–10 Edition)

Agency for Marine Life are transferred to the reorganized agency. If it is determined that the Agency for Clean Water is substantially the same entity from which the chemist terminated, the section 207(c) bar will apply with respect to the chemist's contacts with all of the employees of the Agency for Clean Water, including those employees who recently transferred from the Agency for Marine Life. He would not be barred from contacting an employee serving in one of the positions that had been transferred from the Agency for Clean Rivers to the Agency for Clean Land.

(h) *On behalf of any other person.* See § 2641.201(g).

(i) *Matter on which former senior employee seeks official action—(1) Seeks official action.* A former senior employee seeks official action when the circumstances establish that he is making his communication or appearance for the purpose of inducing a current employee, as defined in paragraph (g) of this section, to make a decision or to otherwise act in his official capacity.

(2) *Matter.* The prohibition on seeking official action applies with respect to any matter, including:

(i) Any "particular matter involving a specific party or parties" as defined in § 2641.201(h);

(ii) The consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons;

(iii) A new matter that was not previously pending at or of interest to the former senior employee's former agency; and

(iv) A matter pending at any other agency in the executive branch, an independent agency, the legislative branch, or the judicial branch.

Example 1 to paragraph (i): A former senior employee at the National Capital Planning Commission (NCPC) wishes to contact a friend who still works at the NCPC to solicit a donation for a local charitable organization. The former senior employee may do so since the circumstances establish that he would not be making the communication for the purpose of inducing the NCPC employee to make a decision in his official capacity about the donation.

Example 2 to paragraph (i): A former senior employee at the Department of Defense wishes to contact the Secretary of Defense to ask him if he would be interested in attending a cocktail party. At the party, the former senior employee would introduce the Secretary to several of the former senior em-

ployee's current business clients who have sought the introduction. The former senior employee and the Secretary do not have a history of socializing outside the office, the Secretary is in a position to affect the interests of the business clients, and all expenses associated with the party will be paid by the former senior employee's consulting firm. The former senior employee should not contact the Secretary. The circumstances do not establish that the communication would be made other than for the purpose of inducing the Secretary to make a decision in his official capacity about the invitation.

Example 3 to paragraph (i): A former senior employee at the National Science Foundation (NSF) accepts a position as vice president of a company that was hurt by recent cuts in the defense budget. She contacts the NSF's Director of Legislative and Public Affairs to ask the Director to contact a White House official in order to press the need for a new science policy to benefit her company. The former senior employee made a communication for the purpose of inducing the NSF employee to make a decision in his official capacity about contacting the White House.

§ 2641.205 Two-year restriction on any former very senior employee's representations to former agency or certain officials concerning any matter, regardless of prior involvement.

(a) *Basic prohibition of 18 U.S.C. 207(d).* For two years after his service in a very senior employee position terminates, no former very senior employee shall knowingly, with the intent to influence, make any communication to or appearance before any official appointed to an Executive Schedule position listed in 5 U.S.C. 5312–5316 or before any employee of an agency in which he served as a very senior employee within the one-year period prior to his termination from a very senior employee position, if that communication or appearance is made on behalf of any other person in connection with any matter on which the former very senior employee seeks official action by any official or employee.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(d) does not apply to a former very senior employee who is:

(1) Acting on behalf of the United States. See § 2641.301(a).

(2) Acting as an elected State or local government official. See § 2641.301(b).

(3) Acting on behalf of specified entities. See § 2641.301(c).

Office of Government Ethics

§ 2641.205

(4) Making uncompensated statements based on special knowledge. *See* § 2641.301(d).

(5) Communicating scientific or technological information pursuant to procedures or certification. *See* § 2641.301(e).

(6) Testifying under oath. *See* § 2641.301(f).

(7) Acting on behalf of a candidate or political party. *See* § 2641.301(g).

(8) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(9) Acting as an employee of a Government-owned, contractor-operated entity pursuant to a waiver. *See* § 2641.301(i).

(c) *Commencement and length of restriction.* 18 U.S.C. 207(d) is a two-year restriction. The two-year period is measured from the date when the employee ceases to serve in a very senior employee position, not from the termination of Government service, unless the two events occur simultaneously. *See* examples 1 and 2 to paragraph (d) of § 2641.204.

(d) *Communication or appearance.* *See* § 2641.201(d).

(e) *With the intent to influence.* *See* § 2641.201(e).

(f) *To or before employee of former agency.* *See* § 2641.204(g), except that this section covers only former very senior employees and applies only with respect to the agency or agencies in which a former very senior employee served as a very senior employee, and very senior employees do not benefit from the designation of distinct and separate agency components as referenced in § 2641.204(g)(2).

(g) *To or before an official appointed to an Executive Schedule position.* *See* § 2641.204(g)(3) for “to or before,” except that this section covers only former very senior employees and also extends to a communication or appearance before any official currently appointed to a position that is listed in sections 5 U.S.C. 5312–5316.

NOTE TO PARAGRAPH (g): A communication made to an official described in 5 U.S.C. 5312–5316 can include a communication to a subordinate of such official with the intent that the information be conveyed directly to the official and attributed to the former very senior employee.

(h) *On behalf of any other person.* *See* § 2641.201(g).

(i) *Matter on which former very senior employee seeks official action.* *See* § 2641.204(i), except that this section only covers former very senior employees.

Example 1 to § 2641.205: The former Attorney General may not contact the Assistant Attorney General of the Antitrust Division on behalf of a professional sports league in support of a proposed exemption from certain laws, nor may he contact the Secretary of Labor. He may, however, speak directly to the President or Vice President concerning the issue.

Example 2 to § 2641.205: The former Director of the Office of Management and Budget (OMB) is now the Chief Executive Officer of a major computer firm and wishes to convince the new Administration to change its new policy concerning computer chips. The former OMB Director may contact an employee of the Department of Commerce who, although paid at a level fixed according to level III of the Executive Schedule, does not occupy a position actually listed in 5 U.S.C. 5312–5316. She could not contact an employee working in the Office of the United States Trade Representative, an office within the Executive Office of the President (her former agency).

Example 3 to § 2641.205: A senior employee serves in the Department of Agriculture for several years. He is then appointed to serve as the Secretary of Health and Human Services (HHS) but resigns seven months later. Since the individual served as a very senior employee only at HHS, he is barred for two years by 18 U.S.C. 207(d) as to any employee of HHS and any official currently appointed to an Executive Schedule position listed in 5 U.S.C. 5312–5316, including any such official serving in the Department of Agriculture. (In addition, a one-year section 207(c) bar commenced when he terminated service as a senior employee at the Department of Agriculture.)

Example 4 to § 2641.205: The former Secretary of the Department of Labor may not represent another person in a meeting with the current Secretary of Transportation to discuss a proposed regulation on highway safety standards.

Example 5 to § 2641.205: In the previous example, the former very senior employee would like to meet instead with the special assistant to the Secretary of Transportation. The former employee knows that the special assistant has a close working relationship with the Secretary. The former employee expects that the special assistant would brief the Secretary about any discussions at the proposed meeting and refer specifically to

§ 2641.206

the former employee. Because the circumstances indicate that the former employee intends that the information provided at the meeting would be conveyed by the assistant directly to the Secretary and attributed to the former employee, he may not meet with the assistant.

§ 2641.206 One-year restriction on any former senior or very senior employee's representations on behalf of, or aid or advice to, a foreign entity.

(a) *Basic prohibition of 18 U.S.C. 207(f).* For one year after service in a senior or very senior employee position terminates, no former senior employee or former very senior employee shall knowingly represent a foreign government or foreign political party before an officer or employee of an agency or department of the United States, or aid or advise such a foreign entity, with the intent to influence a decision of such officer or employee. For purposes of describing persons who may not be contacted with the intent to influence, under 18 U.S.C. 207(f) and this section, the phrase "officer or employee" includes the President, the Vice President, and Members of Congress, and the term "department" includes the legislative branch of government.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(f) does not apply to a former senior or former very senior employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a). (Note, however, the limitation in § 2641.301(a)(2)(ii).)

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Testifying under oath. *See* § 2641.301(f).

(4) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(5) Acting as an employee of a Government-owned, contractor-operated entity pursuant to a waiver. *See* § 2641.301(i).

(6) Subject to a waiver issued for certain positions. *See* § 2641.301(j).

(c) *Commencement and length of restriction*—(1) *Generally.* Except as provided in paragraph (c)(2) of this section, 18 U.S.C. 207(f) is a one-year restriction. The one-year period is measured from the date when an employee ceases to be a senior or very senior employee, not

5 CFR Ch. XVI (1–1–10 Edition)

from the termination of Government service, unless the two occur simultaneously. *See* examples 1 and 2 to paragraph (d) of § 2641.204.

(2) *U.S. Trade Representative or Deputy U.S. Trade Representative.* 18 U.S.C. 207(f) is a permanent restriction as applied to a former U.S. Trade Representative or Deputy U.S. Trade Representative.

(d) *Represent, aid, or advise.* [Reserved]

(e) *With the intent to influence.* [Reserved]

(f) *Decision of employee of an agency.* [Reserved]

(g) *Foreign entity.* [Reserved]

§ 2641.207 One-year restriction on any former private sector assignee under the Information Technology Exchange Program representing, aiding, counseling or assisting in representing in connection with any contract with former agency.

(a) *Basic prohibition of 18 U.S.C. 207(l).* For one year after the termination of his assignment from a private sector organization to an agency under the Information Technology Exchange Program, 5 U.S.C. chapter 37, no former assignee shall knowingly represent, or aid, counsel or assist in representing any other person in connection with any contract with that agency.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(l) does not apply to a former employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Testifying under oath. *See* § 2641.301(f).

(4) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(5) Acting as an employee of a Government-owned, contractor-operated entity pursuant to a waiver. *See* § 2641.301(i).

(c) *Commencement and length of restriction.* 18 U.S.C. 207(l) is a one-year restriction. The one-year period is measured from the date when the individual's assignment under the Information Technology Exchange Program terminates.

(d) *Represent, aid, counsel, or assist in representing.* [Reserved]