

§ 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

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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]

(e) *In connection with any contract with the former agency.* [Reserved]

Subpart C—Exceptions, Waivers and Separate Components

§2641.301 Statutory exceptions and waivers.

(a) *Exception for acting on behalf of United States.* A former employee is not prohibited by any of the prohibitions of 18 U.S.C. 207 from engaging in any activity on behalf of the United States.

(1) *United States.* For purposes of this paragraph, the term “United States” means:

- (i) The executive branch (including a Government corporation);
- (ii) The legislative branch; or
- (iii) The judicial branch.

(2) *On behalf of the United States.* A former employee will be deemed to engage in the activity on behalf of the United States if he acts in accordance with paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(i) *As employee of the United States.* A former employee engages in an activity on behalf of the United States when he carries out official duties as a current employee of the United States.

(ii) *As other than employee of the United States.* (A) Provided that he does not represent, aid, or advise a foreign entity in violation of 18 U.S.C. 207(f), a former employee engages in an activity on behalf of the United States when he serves:

(1) As a representative of the United States pursuant to a specific agreement with the United States to provide representational services to the United States; or

(2) As a witness called by the United States (including a Congressional committee or subcommittee) to testify at a Congressional hearing (even if applicable procedural rules do not require him to declare by oath or affirmation that he will testify truthfully).

(B) A former employee will not be deemed to engage in an activity on behalf of the United States merely because he is performing work funded by the Government, because he is engaging in the activity in response to a contact initiated by the Government, because the Government will derive some benefit from the activity, or because he

or the person on whose behalf he is acting may share the same objective as the Government.

NOTE TO PARAGRAPH (a)(2)(ii): *See also* §2641.301(f) concerning the permissibility of testimony under oath, including testimony as an expert witness, when a former employee is called as a witness by the United States.

Example 1 to paragraph (a): An employee of the Department of Transportation (DOT) transfers to become an employee of the Pension Benefit Guaranty Corporation (PBGC). The PBGC, a wholly owned Government corporation, is a corporation in which the United States has a proprietary interest. The former DOT employee may press the PBGC’s point of view in a meeting with DOT employees concerning an airline bankruptcy case in which he was personally and substantially involved while at the DOT. His communications to the DOT on behalf of the PBGC would be made on behalf of the United States.

Example 2 to paragraph (a): A Federal Transit Administration (FTA) employee recommended against the funding of a certain subway project. After terminating Government service, she is hired by a Congressman as a member of his staff to perform a variety of duties, including miscellaneous services for the Congressman’s constituents. The former employee may contact the FTA on behalf of a constituent group as part of her official duties in order to argue for the reversal of the subway funding decision in which she participated while still an employee of the FTA. Her communications to the FTA on behalf of the constituent group would be made on behalf of the United States.

Example 3 to paragraph (a): A Postal Service attorney participated in discussions with the Office of Personnel Management (OPM) concerning a dispute over the mailing of health plan brochures. After terminating Government service, the attorney joins a law firm as a partner. He is assigned by the firm’s managing partner to represent the Postal Service pursuant to a contract requiring the firm to provide certain legal services. The former senior employee may represent the Postal Service in meetings with OPM concerning the dispute about the health plan brochures. The former senior employee’s suggestions to the Postal Service concerning strategy and his arguments to OPM concerning the dispute would be made on behalf of the United States (even though he is also acting on behalf of his law firm when he performs representational services for the United States). A communication to the Postal Service concerning a disagreement about the law firm’s fee, however, would not be made on behalf of the United States.