

## § 2641.101

representing, aiding, counseling or assisting in representing in connection with any contract with former agency.

### Subpart C—Exceptions, Waivers and Separate Components

2641.301 Statutory exceptions and waivers.

2641.302 Separate agency components.

APPENDIX A TO PART 2641—POSITIONS WAIVED FROM 18 U.S.C. 207(c) and (f)

APPENDIX B TO PART 2641—AGENCY COMPONENTS FOR PURPOSES OF 18 U.S.C. 207(C)

AUTHORITY: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

SOURCE: 73 FR 36186, June 25, 2008, unless otherwise noted.

### Subpart A—General Provisions

#### § 2641.101 Purpose.

18 U.S.C. 207 prohibits certain acts by former employees (including current employees who formerly served in “senior” or “very senior” employee positions) which involve, or may appear to involve, the unfair use of prior Government employment. None of the restrictions of section 207 prohibits any former employee, regardless of Government rank or position, from accepting employment with any particular private or public employer. Rather, section 207 prohibits a former employee from providing certain services to or on behalf of non-Federal employers or other persons, whether or not done for compensation. These restrictions are personal to the employee and are not imputed to others. (See, however, the note following §2641.103 concerning 18 U.S.C. 2.)

(a) This part 2641 explains the scope and content of 18 U.S.C. 207 as it applies to former employees of the executive branch or of certain independent agencies (including current employees who formerly served in “senior” or “very senior” employee positions). Although certain restrictions in section 207 apply to former employees of the District of Columbia, Members and elected officials of the Congress and certain legislative staff, and employees of independent agencies in the legislative and judicial branches, this part is

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not intended to provide guidance to those individuals.

(b) Part 2641 does not address post-employment restrictions that may be contained in laws or authorities other than 18 U.S.C. 207. These restrictions include those in 18 U.S.C. 203 and 41 U.S.C. 423(d).

#### § 2641.102 Applicability.

Since its enactment in 1962, 18 U.S.C. 207 has been amended several times. As a consequence of these amendments, former executive branch employees are subject to varying post-employment restrictions depending upon the date they terminated Government service (or service in a “senior” or “very senior” employee position).

(a) *Employees terminating on or after January 1, 1991.* Former employees who terminated or employees terminating Government service (or service in a “senior” or “very senior” employee position) on or after January 1, 1991, are subject to the provisions of 18 U.S.C. 207 as amended by the Ethics Reform Act of 1989, title I, Public Law 101–194, 103 Stat. 1716 (with amendments enacted by Act of May 4, 1990, Pub. L. 101–280, 104 Stat. 149) and by subsequent amendments. This part 2641 provides guidance concerning section 207 to these former employees.

(b) *Employees terminating between July 1, 1979 and December 31, 1990.* Former employees who terminated service between July 1, 1979, and December 31, 1990, are subject to the provisions of section 207 as amended by the Ethics in Government Act of 1978, title V, Public Law 95–521, 92 Stat. 1864 (with amendments enacted by Act of June 22, 1979, Pub. L. 96–28, 93 Stat. 76). Regulations providing guidance concerning 18 U.S.C. 207 to these employees were last published in the 2008 edition of title 5 of the Code of Federal Regulations, revised as of January 1, 2008.

(c) *Employees terminating prior to July 1, 1979.* Former employees who terminated service prior to July 1, 1979, are subject to the provisions of 18 U.S.C. 207 as enacted in 1962 by the Act of October 23, 1962, Public Law 87–849, 76 Stat. 1123.

NOTE TO §2641.102: The provisions of this part 2641 reflect amendments to 18 U.S.C. 207 enacted subsequent to the Ethics Reform Act

of 1989 and before July 25, 2008. An employee who terminated Government service (or service in a “senior” or “very senior” employee position) between January 1, 1991, and July 25, 2008 may have become subject, upon termination, to a version of the statute that existed prior to the effective date of one or more of those amendments. Those amendments concerned: (1) changes, effective in 1990, 1996, and 2004 concerning the rate of basic pay triggering “senior employee” status for purposes of section 207(c); (2) the reinstatement and subsequent amendment of the Presidential waiver authority in section 207(k); (3) the length of the restriction set forth in section 207(f) as applied to a former United States Trade Representative or Deputy United States Trade Representative; (4) the addition of section 207(j)(7), an exception to section 207(c) and (d); (5) a change to section 207(j)(2)(B), an exception to section 207(c) and (d); (6) the addition of assignees under the Information Technology Exchange Program to the categories of “senior employee” for purposes of section 207(c); (7) the addition of section 207(l), applicable to former private sector assignees under the Information Technology Exchange Program; (8) a change to the length of the restriction set forth in section 207(d); and (9) the addition of a cross-reference in section 207(j)(1)(B) to a revised exception in the Indian Self-Determination and Education Assistance Act.

#### § 2641.103 Enforcement and penalties.

(a) *Enforcement.* Criminal and civil enforcement of the provisions of 18 U.S.C. 207 is the responsibility of the Department of Justice. An agency is required to report to the Attorney General any information, complaints or allegations of possible criminal conduct in violation of title 18 of the United States Code, including possible violations of section 207 by former officers and employees. See 28 U.S.C. 535. When a possible violation of section 207 is referred to the Attorney General, the referring agency shall concurrently notify the Director of the Office of Government Ethics of the referral in accordance with 5 CFR 2638.603.

(b) *Penalties and injunctions.* 18 U.S.C. 216 provides for the imposition of one or more of the following penalties and injunctions for a violation of section 207:

(1) *Criminal penalties.* 18 U.S.C. 216(a) sets forth the maximum imprisonment terms for felony and misdemeanor violations of section 207. Section 216(a) also provides for the imposition of

criminal fines for violations of section 207. For the amount of the criminal fines that may be imposed, see 18 U.S.C. 3571.

(2) *Civil penalties.* 18 U.S.C. 216(b) authorizes the Attorney General to take civil actions to impose civil penalties for violations of section 207 and sets forth the amounts of the civil fines.

(3) *Injunctive relief.* 18 U.S.C. 216(c) authorizes the Attorney General to seek an order from a United States District Court to prohibit a person from engaging in conduct which violates section 207.

(c) *Other relief.* In addition to any other remedies provided by law, the United States may, pursuant to 18 U.S.C. 218, void or rescind contracts, transactions, and other obligations of the United States in the event of a final conviction pursuant to section 207, and recover the amount expended or the thing transferred or its reasonable value.

NOTE TO § 2641.103: A person or entity who aids, abets, counsels, commands, induces, or procures commission of a violation of section 207 is punishable as a principal under 18 U.S.C. 2.

#### § 2641.104 Definitions.

For purposes of this part:

*Agency* means any department, independent establishment, commission, administration, authority, board or bureau of the United States or Government corporation. The term includes any independent agency not in the legislative or judicial branches.

*Agency ethics official* means the designated agency ethics official (DAEO) or the alternate DAEO, appointed in accordance with 5 CFR 2638.202(b), and any deputy ethics official described in 5 CFR 2638.204.

*Department* means one of the executive departments listed in 5 U.S.C. 101.

*Designated agency ethics official (DAEO)* means the official designated under 5 CFR 2638.201 to coordinate and manage an agency’s ethics program.

*Employee* means, for purposes of determining the individuals subject to 18 U.S.C. 207, any officer or employee of the executive branch or any independent agency that is not a part of the legislative or judicial branches.