

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.

*Example 4 to paragraph (a):* A former senior employee of the Food and Drug Administration (FDA), now an employee of a drug company, is called by a Congressional committee to give unsworn testimony concerning the desirability of instituting cost controls in the pharmaceutical industry. The former senior employee may address the committee even though her testimony will unavoidably also be directed to a current employee of the FDA who has also been asked to testify as a member of the same panel of experts. The former employee's communications at the hearing, provided at the request of the United States, would be made on behalf of the United States.

*Example 5 to paragraph (a):* A National Security Agency (NSA) analyst drafted the specifications for a contract that was awarded to the Secure Data Corporation to develop prototype software for the processing of foreign intelligence information. After terminating Government service, the analyst is hired by the corporation. The former employee may not attempt to persuade NSA officials that the software is in accord with the specifications. Although the development of the software is expected to significantly enhance the processing of foreign intelligence information and the former employee's opinions might be useful to current NSA employees, his communications would not be made on behalf of the United States.

*Example 6 to paragraph (a):* A senior employee at the Department of the Air Force specialized in issues relating to the effective utilization of personnel. After terminating Government service, the former senior employee is hired by a contractor operating a Federally Funded Research and Development Center (FFRDC). The FFRDC is not a "Government corporation" as defined in § 2641.104. The former senior employee may not attempt to convince the Air Force of the manner in which Air Force funding should be allocated among projects proposed to be undertaken by the FFRDC. Although the work performed by the FFRDC will be determined by the Air Force, may be accomplished at Government-owned facilities, and will benefit the Government, her communications would not be made on behalf of the United States.

*Example 7 to paragraph (a):* A Department of Justice (DOJ) attorney represented the United States in a civil enforcement action

against a company that had engaged in fraudulent activity. The settlement of the case required that the company correct certain deficiencies in its operating procedures. After terminating Government service, the attorney is hired by the company. When DOJ auditors schedule a meeting with the company's legal staff to review company actions since the settlement, the former employee may not attempt to persuade the auditors that the company is complying with the terms of the settlement. Although the former employee's insights might facilitate the audit, his communications would not be made on behalf of the United States even though the Government's auditors initiated the contact with the former employee.

NOTE TO PARAGRAPH (a): See also example 9 to paragraph (j) of § 2641.202 and example 1 to paragraph (d) of § 2641.204.

(b) *Exception for acting on behalf of State or local government as elected official.* A former employee is not prohibited by any of the prohibitions of 18 U.S.C. 207 from engaging in any post-employment activity on behalf of one or more State or local governments, provided the activity is undertaken in carrying out official duties as an elected official of a State or local government.

*Example 1 to paragraph (b):* A former employee of the Department of Housing and Urban Development (HUD) participated personally and substantially in the evaluation of a grant application from a certain city. After terminating Government service, he was elected mayor of that city. The former employee may contact an Assistant Secretary at HUD to argue that additional funds are due the city under the terms of the grant.

*Example 2 to paragraph (b):* A former employee of the Federal Highway Administration (FHWA) participated personally and substantially in the decision to provide funding for a bridge across the White River in Arkansas. After terminating Government service, she accepted the Governor's offer to head the highway department in Arkansas. A communication to or appearance before the FHWA concerning the terms of the construction grant would not be made as an elected official of a State or local government.

(c) *Exception for acting on behalf of specified entities.* A former senior or very senior employee is not prohibited by 18 U.S.C. 207(c) or (d), or §§ 2641.204 or 2641.205, from making a communication or appearance on behalf of one or more entities specified in paragraph (c)(1) of this section, provided the communication or appearance is made in

carrying out official duties as an employee of a specified entity.

(1) *Specified entities.* For purposes of this paragraph, a specified entity is:

(i) An agency or instrumentality of a State or local government;

(ii) A hospital or medical research organization, if exempted from taxation under 26 U.S.C. 501(c)(3); or

(iii) An accredited, degree-granting institution of higher education, as defined in 20 U.S.C. 1001.

(2) *Employee.* For purposes of this paragraph, the term "employee" of a specified entity means a person who has an employee-employer relationship with an entity specified in paragraph (c)(1) of this section. It includes a person who is employed to work part-time for a specified entity. The term excludes an individual performing services for a specified entity as a consultant or independent contractor.

*Example 1 to paragraph (c):* A senior employee leaves her position at the National Institutes of Health (NIH) and takes a full-time position at the Gene Research Foundation, a tax-exempt organization pursuant to 26 U.S.C. 501(c)(3). As an employee of a 501(c)(3) tax-exempt medical research organization, the former senior employee is not barred by 18 U.S.C. 207(c) from representing the Foundation before the NIH.

*Example 2 to paragraph (c):* A former senior employee of the Environmental Protection Agency (EPA) joins a law firm in Richmond, Virginia. The firm is hired by the Commonwealth of Virginia to represent it in discussions with the EPA about an environmental impact statement concerning the construction of a highway interchange. The former senior employee's arguments concerning the environmental impact statement would not be made as an employee of the Commonwealth of Virginia.

*Example 3 to paragraph (c):* A former senior employee becomes an employee of the ABC Association. The ABC Association is a nonprofit organization whose membership consists of a broad representation of State health agencies and senior State health officials, and it performs services from which certain State governments benefit, including collecting information from its members and conveying that information and views to the Federal Government. However, the ABC Association has not been delegated authority by any State government to perform any governmental functions, and it does not operate under the regulatory, financial, or management control of any State government. Therefore, the ABC Association is not an agency or instrumentality of a State gov-

ernment, and the former senior employee may not represent the organization before his former agency within one year after terminating his senior employee position.

(d) *Exception for uncompensated statements based on special knowledge.* A former senior or very senior employee is not prohibited by 18 U.S.C. 207(c) or (d), or §§ 2641.204 or 2641.205, from making a statement based on his own special knowledge in the particular area that is the subject of the statement, provided that he receives no compensation for making the statement.

(1) *Special knowledge.* A former employee has special knowledge concerning a subject area if he is familiar with the subject area as a result of education, interaction with experts, or other unique or particularized experience.

(2) *Statement.* A statement for purposes of this paragraph is a communication of facts observed by the former employee.

(3) *Compensation.* Compensation includes any form of remuneration or income that is given in consideration, in whole or in part, for the statement. It does not include the payment of actual and necessary expenses incurred in connection with making the statement.

*Example 1 to paragraph (d):* A senior employee of the Department of the Treasury was personally and substantially involved in discussions with other Department officials concerning the advisability of a three-phase reduction in the capital gains tax. After Government service, the former senior employee affiliates with a nonprofit group that advocates a position on the three-phase capital gains issue that is similar to his own. The former senior employee, who receives no salary from the nonprofit organization, may meet with current Department officials on the organization's behalf to state what steps had previously been taken by the Department to address the issue. The statement would be permissible even if the nonprofit organization reimbursed the former senior employee for his actual and necessary travel expenses incurred in connection with making the statement.

*Example 2 to paragraph (d):* A former senior employee becomes a government relations consultant, and he enters into a \$5,000 per month retainer agreement with XYZ Corporation for government relations services. He would like to meet with his former agency to discuss a regulatory matter involving his client. Even though he would not be paid

by XYZ specifically for this particular meeting, he nevertheless would receive compensation for any statements at the meeting, because of the monthly payments under his standing retainer agreement. Therefore he may not rely on the exception for uncompensated statements based on special knowledge.

(e) *Exception for furnishing scientific or technological information.* A former employee is not prohibited by 18 U.S.C. 207(a), (c), or (d), or §§ 2641.201, 2641.202, 2641.204, or 2641.205, from making communications, including appearances, solely for the purpose of furnishing scientific or technological information, provided the communications are made either in accordance with procedures adopted by the agency or agencies to which the communications are directed or the head of such agency or agencies, in consultation with the Director of the Office of Government Ethics, makes a certification published in the FEDERAL REGISTER.

(1) *Purpose of information.* A communication made solely for the purpose of furnishing scientific or technological information may be:

- (i) Made in connection with a matter that involves an appreciable element of actual or potential dispute;
- (ii) Made in connection with an effort to seek a discretionary Government ruling, benefit, approval, or other action; or
- (iii) Inherently influential in relation to the matter in dispute or the Government action sought.

(2) *Scientific or technological information.* The former employee must convey information of a scientific or technological character, such as technical or engineering information relating to the natural sciences. The exception does not extend to information associated with a nontechnical discipline such as law, economics, or political science.

(3) *Incidental references or remarks.* Provided the former employee's communication primarily conveys information of a scientific or technological character, the entirety of the communication will be deemed made solely for the purpose of furnishing such information notwithstanding an incidental reference or remark:

- (i) Unrelated to the matter to which the post-employment restriction applies;

- (ii) Concerning feasibility, risk, cost, speed of implementation, or other considerations when necessary to appreciate the practical significance of the basic scientific or technological information provided; or

- (iii) Intended to facilitate the furnishing of scientific or technological information, such as those references or remarks necessary to determine the kind and form of information required or the adequacy of information already supplied.

*Example 1 to paragraph (e)(3):* After terminating Government service, a former senior employee at the National Security Agency (NSA) accepts a position as a senior manager at a firm specializing in the development of advanced security systems. The former senior employee and another firm employee place a conference call to a current NSA employee to follow up on an earlier discussion in which the firm had sought funding from the NSA to develop a certain proposed security system. After the other firm employee explains the scientific principles underlying the proposed system, the former employee may not state the system's expected cost. Her communication would not primarily convey information of a scientific or technological character.

*Example 2 to paragraph (e)(3):* If, in the previous example, the former senior employee explained the scientific principles underlying the proposed system, she could also have stated its expected cost as an incidental reference or remark.

(4) *Communications made under procedures acceptable to the agency.* (i) An agency may adopt such procedures as are acceptable to it, specifying conditions under which former Government employees may make communications solely for the purpose of furnishing scientific or technological information, in light of the agency's particular programs and needs. In promulgating such procedures, an agency may consider, for example, one or more of the following:

- (A) Requiring that the former employee specifically invoke the exception prior to making a communication (or series of communications);
- (B) Requiring that the designated agency ethics official for the agency to which the communication is directed (or other agency designee) be informed when the exception is used;

(C) Limiting communications to certain formats which are least conducive to the use of personal influence;

(D) Segregating, to the extent possible, meetings and presentations involving technical substance from those involving other aspects of the matter; or

(E) Employing more restrictive practices in relation to communications concerning specified categories of matters or specified aspects of a matter, such as in relation to the pre-award as distinguished from the post-award phase of a procurement.

(ii) The Director of the Office of Government Ethics may review any agency implementation of this exception in connection with OGE's executive branch ethics program oversight responsibilities. See 5 CFR part 2638.

*Example 1 to paragraph (e)(4):* A Marine Corps engineer participates personally and substantially in drafting the specifications for a new assault rifle. After terminating Government service, he accepts a job with the company that was awarded the contract to produce the rifle. Provided he acts in accordance with agency procedures, he may accompany the President of the company to a meeting with Marine Corps employees and report the results of a series of metallurgical tests. These results support the company's argument that it has complied with a particular specification. He may do so even though the meeting was expected to be and is, in fact, a contentious one in which the company's testing methods are at issue. He may not, however, present the company's argument that an advance payment is due the company under the terms of the contract since this would not be a mere incidental reference or remark within the meaning of paragraph (e)(3) of this section.

(5) *Certification for expertise in technical discipline.* A certification issued in accordance with this section shall be effective on the date it is executed (unless a later date is specified), provided that it is transmitted to the FEDERAL REGISTER for publication.

(i) *Criteria for issuance.* A certification issued in accordance with this section may not broaden the scope of the exception and may be issued only when:

(A) The former employee has outstanding qualifications in a scientific, technological, or other technical discipline (involving engineering or other natural sciences as distinguished from

a nontechnical discipline such as law, economics, or political science);

(B) The matter requires the use of such qualifications; and

(C) The national interest would be served by the former employee's participation.

(ii) *Submission of requests.* The individual wishing to make the communication shall forward a written request to the head of the agency to which the communications would be directed. Any such request shall address the criteria set forth in paragraph (e)(5)(i) of this section.

(iii) *Issuance.* The head of the agency to which the communications would be directed may, upon finding that the criteria specified in paragraph (e)(5)(i) of this section are satisfied, approve the request by executing a certification, which shall be published in the FEDERAL REGISTER. A copy of the certification shall be forwarded to the affected individual. The head of the agency shall, prior to execution of the certification, furnish a draft copy of the certification to the Director of the Office of Government Ethics and consider the Director's comments, if any, in relation to the draft. The certification shall specify:

(A) The name of the former employee;

(B) The Government position or positions held by the former employee during his most recent period of Government service;

(C) The identity of the employer or other person on behalf of which the former employee will be acting;

(D) The restriction or restrictions to which the certification shall apply;

(E) Any limitations imposed by the agency head with respect to the scope of the certification; and

(F) The basis for finding that the criteria specified in paragraph (e)(5)(i) of this section are satisfied, specifically including a description of the matter and the communications that will be permissible or, if relevant, a statement that such information is protected from disclosure by statute.

(iv) *Copy to Office of Government Ethics.* Once published, the agency shall provide the Director of the Office of Government Ethics with a copy of the

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certification as published in the FEDERAL REGISTER.

(v) *Revocation.* The agency head may revoke a certification and shall forward a written notice of the revocation to the former employee and to the OGE Director. Revocation of a certification shall be effective on the date specified in the notice revoking the certification.

(f) *Exception for giving testimony under oath or making statements required to be made under penalty of perjury.* Subject to the limitation described in paragraph (f)(2) of this section concerning expert witness testimony, a former employee is not prohibited by any of the prohibitions of 18 U.S.C. 207 from giving testimony under oath or making a statement required to be made under penalty of perjury.

(1) *Testimony under oath.* Testimony under oath is evidence delivered by a witness either orally or in writing, including deposition testimony and written affidavits, in connection with a judicial, quasi-judicial, administrative, or other legally recognized proceeding in which applicable procedural rules require a witness to declare by oath or affirmation that he will testify truthfully.

(2) *Limitation on exception for service as an expert witness.* The exception described in paragraph (f)(1) of this section does not negate the bar of 18 U.S.C. 207(a)(1), or § 2641.201, to a former employee serving as an expert witness; where the bar of section 207(a)(1) applies, a former employee may not serve as an expert witness except:

(i) If he is called as a witness by the United States; or

(ii) By court order. For this purpose, a subpoena is not a court order, nor is an order merely qualifying an individual to testify as an expert witness.

(3) *Statements made under penalty of perjury.* A former employee may make any statement required to be made under penalty of perjury, except that he may not:

(i) Submit a pleading, application, or other document as an attorney or other representative; or

(ii) Serve as an expert witness where the bar of 18 U.S.C. 207(a)(1) applies, ex-

cept as provided in paragraph (f)(2) of this section.

NOTE TO PARAGRAPH (f): Whether compensation of a witness is appropriate is not addressed by 18 U.S.C. 207. However, 18 U.S.C. 201 may prohibit individuals from receiving compensation for testifying under oath in certain forums except as authorized by 18 U.S.C. 201(d). Note also that there may be statutory or other bars on the disclosure by a current or former employee of information from the agency's files or acquired in connection with the individual's employment with the Government; a former employee's agency may have promulgated procedures to be followed with respect to the production or disclosure of such information.

*Example 1 to paragraph (f):* A former employee is subpoenaed to testify in a case pending in a United States district court concerning events at the agency she observed while she was performing her official duties with the Government. She is not prohibited by 18 U.S.C. 207 from testifying as a fact witness in the case.

*Example 2 to paragraph (f):* An employee was removed from service by his agency in connection with a series of incidents where the employee was absent without leave or was unable to perform his duties because he appeared to be intoxicated. The employee's supervisor, who had assisted the agency in handling the issues associated with the removal, subsequently left Government. In the ensuing case in Federal court between the employee who had been removed and his agency over whether he had been discriminated against because of his disabling alcoholism, his former supervisor was asked whether on certain occasions the employee had been intoxicated on the job and unable to perform his assigned duties. Opposing counsel objected to the question on the basis that the question required expert testimony and the witness had not been qualified as an expert. The judge overruled the objection on the basis that the witness would not be providing expert testimony but opinions or inferences which are rationally based on his perception and helpful to a clear understanding of his testimony or the determination of a fact in issue. The former employee may provide the requested testimony without violating 18 U.S.C. 207.

*Example 3 to paragraph (f):* A former senior employee of the Environmental Protection Agency (EPA) is a recognized expert concerning compliance with Clean Air Act requirements. Within one year after terminating Government service, she is retained by a utility company that is the defendant in a lawsuit filed against it by the EPA. While the matter had been pending while she was with the agency, she had not worked on the matter. After the court rules that she is qualified to testify as an expert, the former

senior employee may offer her sworn opinion that the utility company's practices are in compliance with Clean Air Act requirements. She may do so although she would otherwise have been barred by 18 U.S.C. 207(c) from making the communication to the EPA.

*Example 4 to paragraph (f):* In the previous example, an EPA scientist served as a member of the EPA investigatory team that compiled a report concerning the utility company's practices during the discovery stage of the lawsuit. She later terminated Government service to join a consulting firm and is hired by the utility company to assist it in its defense. She may not, without a court order, serve as an expert witness for the company in the matter since she is barred by 18 U.S.C. 207(a)(1) from making the communication to the EPA. On application by the utility company for a court order permitting her service as an expert witness, the court found that there were no extraordinary circumstances that would justify overriding the specific statutory bar to such testimony. Such extraordinary circumstances might be where no other equivalent expert testimony can be obtained and an employee's prior involvement in the matter would not cause her testimony to have an undue influence on proceedings. Without such extraordinary circumstances, ordering such expert witness testimony would undermine the bar on such testimony.

(g) *Exception for representing certain candidates or political organizations.* Except as provided in paragraph (g)(2) of this section, a former senior or very senior employee is not prohibited by 18 U.S.C. 207(c) or (d), or §§2641.204 or 2641.205, from making a communication or appearance on behalf of a candidate in his capacity as a candidate or an entity specified in paragraphs (g)(1)(ii) through (g)(1)(vi) of this section.

(1) *Specified persons or entities.* For purposes of this paragraph (g), the specified persons or entities are:

(i) A *candidate.* A candidate means any person who seeks nomination for election, or election to, Federal or State office or who has authorized others to explore on his own behalf the possibility of seeking nomination for election, or election to, Federal or State office;

(ii) An *authorized committee.* An authorized committee means any political committee designated in writing by a candidate as authorized to receive contributions or make expenditures to promote the nomination or election of the candidate or to explore the possi-

bility of seeking the nomination or election of the candidate. The term does not include a committee that receives contributions or makes expenditures to promote more than one candidate;

(iii) A *national committee.* A national committee means the organization which, under the bylaws of a political party, is responsible for the day-to-day operation of the political party at the national level;

(iv) A *national Federal campaign committee.* A national Federal campaign committee means an organization which, under the bylaws of a political party, is established primarily to provide assistance at the national level to candidates nominated by the party for election to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(v) A *State committee.* A State committee means the organization which, under the bylaws of a political party, is responsible for the day-to-day operation of the political party at the State level; or

(vi) A *political party.* A political party means an association, committee, or organization that nominates a candidate for election to any Federal or State elected office whose name appears on the election ballot as the candidate of the association, committee, or organization.

(2) *Limitations.* The exception in this paragraph (g) shall not apply if the communication or appearance:

(i) Is made at a time the former senior or very senior employee is employed by any person or entity other than:

(A) A person or entity specified in paragraph (g)(1) of this section; or

(B) A person or entity who exclusively represents, aids, or advises persons or entities described in paragraph (g)(1) of this section;

(ii) Is made other than solely on behalf of one or more persons or entities specified in paragraph (g)(1) or (g)(2)(i)(B) of this section; or

(iii) Is made to or before the Federal Election Commission by a former senior or very senior employee of the Federal Election Commission.

*Example 1 to paragraph (g):* The former Deputy Director of the Office of Management

and Budget becomes the full-time head of the President's re-election committee. The former Deputy Director may, within two years of terminating his very senior employee position, represent the re-election committee to the White House travel office in discussions regarding the appropriate amounts of reimbursements by the committee of political travel costs of the President.

*Example 2 to paragraph (g):* The former U.S. Attorney General is asked by a candidate running for Governor of Alabama to contact the Chairman of the Federal Trade Commission (a position listed in 5 U.S.C. 5314) to seek the dismissal of a pending enforcement action involving the candidate's family business. The former very senior employee's communication to the Chairman would not be made on behalf of the candidate in his capacity as a candidate and, thus, would be barred by 18 U.S.C. 207(d).

*Example 3 to paragraph (g):* In the previous example, the former Attorney General could contact the Commissioner of Internal Revenue (a position listed in 5 U.S.C. 5314) to urge the review of a tax ruling affecting Alabama's Republican Party since the communication would be made on behalf of a State committee.

*Example 4 to paragraph (g):* The former Assistant Secretary for Legislative and Intergovernmental Affairs at the Department of Commerce is hired as a consultant by a company that provides advisory services to political candidates and senior executives in private industry. Her only client is a candidate for the U.S. Senate. The former senior employee may not contact the Deputy Secretary of Commerce within one year of her termination from the Department to request that the Deputy Secretary give an official speech in which he would express support for legislation proposed by the candidate. The communication would be prohibited by 18 U.S.C. 207(c) because it would be made when the former senior employee was employed by an entity that did not exclusively represent, aid, or advise persons or entities specified in paragraph (g)(1) of this section.

(h) *Waiver for acting on behalf of international organization.* The Secretary of State may grant an individual waiver of one or more of the restrictions in 18 U.S.C. 207 where the former employee would appear or communicate on behalf of, or provide aid or advice to, an international organization in which the United States participates. The Secretary of State must certify in advance that the proposed activity is in the interest of the United States.

NOTE TO PARAGRAPH (h): An employee who is detailed under 5 U.S.C. 3343 to an inter-

national organization remains an employee of his agency. In contrast, an employee who transfers under 5 U.S.C. 3581-3584 to an international organization is a former employee of his agency.

(i) *Waiver for re-employment by Government-owned, contractor-operated entity.* The President may grant a waiver of one or more of the restrictions in 18 U.S.C. 207 to eligible employees upon the determination and certification in writing that the waiver is in the public interest and the services of the individual are critically needed for the benefit of the Federal Government. Upon the issuance of a waiver pursuant to this paragraph, the restriction or restrictions waived will not apply to a former employee acting as an employee of the same Government-owned, contractor-operated entity with which he was employed immediately before the period of Government service during which the waiver was granted. If the individual was employed by the Lawrence Livermore National Laboratory, the Los Alamos National Laboratory, or the Sandia National Laboratory immediately before the person's Federal Government employment began, the restriction or restrictions waived shall not apply to a former employee acting as an employee of any one of those three national laboratories after the former employee's Government service has terminated.

(1) *Eligible employees.* Any current civilian employee of the executive branch, other than an employee serving in the Executive Office of the President, who served as an officer or employee at a Government-owned, contractor-operated entity immediately before he became a Government employee. A total of no more than 25 current employees shall hold waivers at any one time.

(2) *Issuance.* The President may not delegate the authority to issue waivers under this paragraph. If the President issues a waiver, a certification shall be published in the FEDERAL REGISTER and shall identify:

- (i) The employee covered by the waiver by name and position; and
- (ii) The reasons for granting the waiver.



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(3) *Copy to Office of Government Ethics.* A copy of the certification shall be provided to the Director of the Office of Government Ethics (OGE).

(4) *Effective date.* A waiver issued under this section shall be effective on the date the certification is published in the FEDERAL REGISTER.

(5) *Reports.* Each former employee holding a waiver must submit semi-annual reports, for a period of two years after terminating Government service, to the President and the OGE Director.

(i) *Submission.* The reports shall be submitted:

(A) Not later than six months and 60 days after the date of the former employee's termination from the period of Government service during which the waiver was granted; and

(B) Not later than 60 days after the end of any successive six-month period.

(ii) *Content.* Each report shall describe all activities undertaken by the former employee during the six-month period that would have been prohibited by 18 U.S.C. 207 but for the waiver.

(iii) *Public availability.* All reports filed with the OGE Director under this paragraph shall be made available for public inspection and copying.

NOTE TO PARAGRAPH (i)(5): 18 U.S.C. 207(k)(5)(D) specifies that an individual who is granted a waiver as described in this paragraph is ineligible for appointment in the civil service unless all reports required by that section have been filed.

(6) *Revocation.* A waiver shall be revoked when the recipient of the waiver fails to file a report required by paragraph (i)(4) of this section, and the recipient of the waiver shall be notified of such revocation. The revocation shall take effect upon the person's receipt of the notification and shall remain in effect until the report is filed.

(j) *Waiver of restrictions of 18 U.S.C. 207(c) and (f) for certain positions.* The Director of the Office of Government Ethics may waive application of the restriction of section 18 U.S.C. 207(c) and § 2641.204, with respect to certain positions or categories of positions. When the restriction of 18 U.S.C. 207(c) has been waived by the Director pursuant to this paragraph, the one-year restriction of 18 U.S.C. 207(f) and § 2641.206 also

will not be triggered upon an employee's termination from the position.

(1) *Eligible senior employee positions.* A position which could be occupied by a senior employee is eligible for a waiver of the 18 U.S.C. 207(c) restriction except:

(i) The following positions are ineligible:

(A) Positions for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311-5318 (the Executive Schedule);

(B) Positions for which occupants are appointed by the President pursuant to 3 U.S.C. 105(a)(2)(B); or

(C) Positions for which occupants are appointed by the Vice President pursuant to 3 U.S.C. 106(a)(1)(B).

(ii) Regardless of the position occupied, private sector assignees under the Information Technology Exchange Program, within the meaning of paragraph (6) of the definition of senior employee in section 2641.104, are not eligible to benefit from a waiver.

*Example 1 to paragraph (j)(1):* The head of a department has authority to fix the annual salary for a category of positions administratively at a rate of compensation not in excess of the rate of compensation provided for level IV of the Executive Schedule (5 U.S.C. 5315). He sets a salary level that does not reference any Executive Schedule salary. The level of compensation is not "specified in" or "fixed according to" the Executive Schedule. If the authority pursuant to which compensation for a position is set instead stated that the position is to be paid at the rate of level IV of the Executive Schedule, the salary for the position would be fixed according to the Executive Schedule.

(2) *Criteria for waiver.* A waiver of restrictions for a position or category of positions shall be based on findings that:

(i) The agency has experienced or is experiencing undue hardship in obtaining qualified personnel to fill such position or positions as shown by relevant factors which may include, but are not limited to:

(A) Vacancy rates;

(B) The payment of a special rate of pay to the incumbent of the position pursuant to specific statutory authority; or

(C) The requirement that the incumbent of the position have outstanding

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qualifications in a scientific, technological, technical, or other specialized discipline;

(ii) Waiver of the restriction with respect to the position or positions is expected to ameliorate the recruiting difficulties; and

(iii) The granting of the waiver would not create the potential for the use of undue influence or unfair advantage based on past Government service, including the potential for use of such influence or advantage for the benefit of a foreign entity.

(3) *Procedures.* A waiver shall be granted in accordance with the following procedures:

(i) *Agency recommendation.* An agency's designated agency ethics official (DAEO) may, at any time, recommend the waiver of the 18 U.S.C. 207(c) (and section 207(f)) restriction for a position or category of positions by forwarding a written request to the Director addressing the criteria set forth in paragraph (j)(2) of this section. A DAEO may, at any time, request that a current waiver be revoked.

(ii) *Action by Office of Government Ethics.* The Director of the Office of Government Ethics shall promptly provide to the designated agency ethics official a written response to each request for waiver or revocation. The Director shall maintain a listing of positions or categories of positions in appendix A to this part for which the 18 U.S.C. 207(c) restriction has been waived. The Director shall publish notice in the FEDERAL REGISTER when revoking a waiver.

(4) *Effective dates.* A waiver shall be effective on the date of the written response to the designated agency ethics official indicating that the request for waiver has been granted. A waiver shall inure to the benefit of the individual who holds the position when the waiver takes effect, as well as to his successors, but shall not benefit individuals who terminated senior service prior to the effective date of the waiver. Revocation of a waiver shall be effective 90 days after the date that the OGE Director publishes notice of the revocation in the FEDERAL REGISTER. Individuals who formerly served in a position for which a waiver of restrictions was applicable will not become subject to 18 U.S.C. 207(c) (or section

207(f)) if the waiver is revoked after their termination from the position.

(k) *Miscellaneous statutory exceptions.* Several statutory authorities specifically modify the scope of 18 U.S.C. 207 as it would otherwise apply to a former employee or class of former employees. These authorities include:

(1) 22 U.S.C. 3310(c), permitting employees of the American Institute in Taiwan to represent the Institute notwithstanding 18 U.S.C. 207;

(2) 22 U.S.C. 3613(d), permitting the individual who was Administrator of the Panama Canal Commission on the date of its termination to act in carrying out official duties as Administrator of the Panama Canal Authority notwithstanding 18 U.S.C. 207;

(3) 22 U.S.C. 3622(e), permitting an individual who was an employee of the Panama Canal Commission on the date of its termination to act in carrying out official duties on behalf of the Panama Canal Authority;

(4) 25 U.S.C. 450i(j), permitting a former employee who is carrying out official duties as an employee or elected or appointed official of a tribal organization or inter-tribal consortium to act on behalf of the organization or consortium in connection with any matter related to a tribal governmental activity or Federal Indian program or service, if the former employee submits notice of any personal and substantial involvement in the matter during Government service;

(5) 38 U.S.C. 5902(d), permitting a former employee who is a retired officer, warrant officer, or enlisted member of the Armed Forces, while not on active duty, to act on behalf of certain claimants notwithstanding 18 U.S.C. 207 if the claim arises under laws administered by the Secretary of Veterans Affairs;

(6) 50 U.S.C. 405(b), permitting a former part-time member of an advisory committee appointed by the Federal Emergency Management Agency, the Director of National Intelligence, or the National Security Council to engage in conduct notwithstanding 18 U.S.C. 207 except with respect to any particular matter directly involving an agency the former member advised or in which such agency is directly interested;

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(7) 50 U.S.C. app. 463, permitting former employees appointed to certain positions under 50 U.S.C. app. 451 *et seq.* (Military Selective Service Act) to engage in conduct notwithstanding 18 U.S.C. 207; and

(8) Public Law 97-241, title I, section 120, August 24, 1982 (18 U.S.C. 203 note), providing that 18 U.S.C. 207 shall not apply under certain circumstances to private sector representatives on United States delegations to international telecommunications meetings and conferences.

NOTE TO PARAGRAPH (k): Exceptions from 18 U.S.C. 207 may be included in legislation

mandating privatization of Governmental entities. *See*, for example, 42 U.S.C. 2297h-3(c), concerning the privatization of the United States Enrichment Corporation.

(1) *Guide to available exceptions and waivers to the prohibitions of 18 U.S.C. 207.* This chart lists the exceptions and waivers set forth in 18 U.S.C. 207 and for each exception and waiver identifies the prohibitions of section 207 excepted or subject to waiver. Detailed guidance on the applicability of the exceptions and waivers is contained in the cross-referenced paragraphs of this section.

Exception/waiver	Section 207 Prohibitions affected						
	(a)(1)	(a)(2)	(b)	(c)	(d)	(f)	(l)
(1) Acting for the United States, <i>see</i> § 2641.301(a) .....	•	•	•	•	•	•	•
(2) Elected State or local government official, <i>see</i> § 2641.301(b) .....	•	•	•	•	•	•	•
(3) Acting for specified entities, <i>see</i> § 2641.301(c) .....				•	•		
(4) Special knowledge, <i>see</i> § 2641.301(d) .....				•	•		
(5) Scientific or technological information, <i>see</i> § 2641.301(e) .....	•	•		•	•		
(6) Testimony, <i>see</i> § 2641.301(f) .....	•	•	•	•		•	•
(7) Acting for a candidate or political party, <i>see</i> § 2641.301(g) .....				•	•		
(8) Acting for an international organization, <i>see</i> § 2641.301(h) .....	•	•	•	•	•	•	•
(9) Employee of a Government-owned, contractor-operated entity, <i>see</i> § 2641.301(i) .....	•	•	•	•	•	•	•
(10) Waiver for certain positions, <i>see</i> § 2641.301(j) .....				•		•	

**§ 2641.302 Separate agency components.**

(a) *Designation.* For purposes of 18 U.S.C. 207(c) only, and § 2641.204, the Director of the Office of Government Ethics may designate agency “components” that are distinct and separate from the “parent” agency and from each other. Absent such designation, the representational bar of section 207(c) extends to the whole of the agency in which the former senior employee served. An eligible former senior employee who served in the parent agency is not barred by section 207(c) from making communications to or appearances before any employee of any designated component of the parent, but is barred as to any employee of the parent or of any agency or bureau of the parent that has not been designated. An eligible former senior employee who served in a designated component of the parent agency is barred from communicating to or making an appearance before any employee of that designated component, but is not barred as to any employee of the par-

ent, of another designated component, or of any other agency or bureau of the parent that has not been designated.

*Example 1 to paragraph (a):* While employed in the Office of the Secretary of Defense, a former career Senior Executive Service employee was employed in a position for which the rate of basic pay exceeded 86.5 percent of that payable for level II of the Executive Schedule. He is prohibited from contacting the Secretary of Defense and DOD’s Inspector General. However, because eligible under paragraph (b) of this section to benefit from component designation procedures, he is not prohibited by 18 U.S.C. 207(c) from contacting the Secretary of the Army. (The Department of the Army is a designated component of the parent, DOD. The Office of the Secretary of Defense and the Office of the DOD Inspector General are both part of the parent, DOD. *See* the listing of DOD components in appendix B to this part.)

*Example 2 to paragraph (a):* Because eligible under paragraph (b) of this section to benefit from component designation procedures, a former Navy Admiral who last served as the Vice Chief of Naval Operations is not prohibited by 18 U.S.C. 207(c) from contacting the Secretary of Defense, the Secretary of the Army, or DOD’s Inspector General. He is prohibited from contacting the Secretary of the