

§ 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. The term does not include the President or the Vice President, an enlisted member of the Armed Forces, or an officer or employee of the District of Columbia. The term includes an individual appointed as an employee or detailed to the Federal Government under the Intergovernmental Personnel Act (5 U.S.C. 3371–3376) or specifically subject to section 207 under the terms

of another statute. It encompasses senior employees, very senior employees, special Government employees, and employees serving without compensation. (This term is redefined elsewhere in this part, as necessary, when the term is used for other purposes.)

Executive branch includes an executive department as defined in 5 U.S.C. 101, a Government corporation, an independent establishment (other than the Government Accountability Office), the Postal Service, the Postal Regulatory Commission, and also includes any other entity or administrative unit in the executive branch.

Former employee means an individual who has completed a period of service as an employee. Unless otherwise indicated, the term encompasses a former senior employee and a former very senior employee. An individual becomes a former employee at the termination of Government service, whereas an individual becomes a former senior employee or a former very senior employee at the termination of service in a senior or very senior employee position.

Example 1 to the definition of former employee: An individual served as an employee of the Agency for International Development, an agency within the executive branch. Since he was, therefore, an “employee” as that term is defined in this section by virtue of having served in the executive branch, he became a “former employee” when he terminated Government service to pursue his hobbies.

Example 2 to the definition of former employee: An individual served as an employee of the Tennessee Valley Authority (TVA). Since the TVA is a corporation owned or controlled by the Government of the United States, she served as an employee in the “executive branch” as that term is defined in this section. She became a “former employee,” therefore, when she terminated Government service to do some traveling.

Example 3 to the definition of former employee: An individual terminated a GS-14 position in the executive branch to accept a position in the legislative branch. He did not become a “former employee” when he terminated service in the executive branch since he did not terminate “Government service” as that term is defined in this section.

Example 4 to the definition of former employee: An individual is appointed by the President to serve as a special Government employee on the Oncological Drug Advisory Committee at the Department of Health and