

which a subordinate division of the comptroller's office was consulted. She may not represent Q Company on this matter.

(4) *Knowledge of matter pending required.* In order for a former employee to be barred from representing another as to a particular matter, he or she need not have known, while employed by the Government, that the matter was pending under his or her official responsibility. However, the former employee is not subject to the restriction unless at the time of the proposed representation of another, he or she knows or learns that the matter had been under his or her responsibility. Ordinarily, a former employee who is asked to represent another on a matter will become aware of facts sufficient to suggest the relationship of the prior matter to his or her former agency. If so, he or she is under a duty to make further inquiry, including direct contact with an agency's designated ethics official where the matter is in doubt.

(5) *Self-disqualification.* A former employee cannot avoid the restrictions of this section on the ground by self-disqualification with respect to a matter for which he or she otherwise had official responsibility. However, self-disqualification is effective to eliminate the restriction of section 207(a).

(c) *"Actually pending."* "Actually pending" means that the matter was in fact referred to or under consideration by persons within the employee's area of responsibility, not that it merely could have been.

*Example 1:* A staff lawyer in a department's Office of General Counsel is consulted by procurement officers on the correct resolution of a contractual matter involving Q Company. The lawyer renders an opinion resolving the question. The same legal question arises later in several contracts with other companies, but none of the disputes with such companies is referred to the Office of the General Counsel. The General Counsel has official responsibility for the determination of the Q Company matter. The other matters were never "actually pending" under that responsibility, although as a theoretical matter, such responsibility extended to all legal matters within the department.

(d) *Other essential requirements.* All other requirements of the statute must be met before the restriction on representation applies. The same considerations apply in determining the exist-

ence of a "particular matter involving a specific party," a representation in an "appearance," or "intent to influence," and so forth as set forth under § 2637.201 of this part.

*Example 1:* During her tenure as head of an agency, an officer's subordinates undertook major changes in agency enforcement standards involving occupational safety. Eighteen months after terminating Government employment, she is asked to represent Z Company which believes it is being unfairly treated under the enforcement program. The Z Company matter first arose on a complaint filed after the agency head terminated her employment. She may represent Z Company because the matter pending under her official responsibility was not one involving "a specific party." (Moreover, the time-period covered by 18 U.S.C. 207(c) has elapsed.)

(e) *Measurement of two-year restriction period.* The statutory two-year period is measured from the date when the employee's responsibility in a particular area ends, not from the termination of Government service, unless the two occur simultaneously. The prohibition applies to all particular matters subject to such responsibility in the one-year period before termination of such responsibility.

*Example 1:* The Director, Import/Export Division of A Agency retires after 26 years of service and enters private industry as a consultant. He will be restricted for two years with respect to all matters which were actually pending under his official responsibility in the year before his retirement.

*Example 2:* An employee transfers from a position in A Agency to a position in B Agency, and she leaves B Agency for private employment 9 months later. In 15 months she will be free of restriction insofar as matters which were pending under her responsibility in A Agency in the year before her transfer. She will be restricted for two years in respect of B Agency matters which were pending in the year before her departure for private employment.

**§ 2637.203 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.**

(a) *Basic prohibition of 18 U.S.C. 207(b)(ii).* No former Senior Employee (see § 2637.102(a)(6)), within two years after terminating employment by the United States, shall knowingly represent or aid, counsel, advise, consult,

or assist in representing any other person by personal presence at any formal or informal appearance, (1) before the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter he or she participated personally and substantially.

(b) *Limitation to “representational” assistance by “personal presence” at an appearance.* Section 207(b)(ii) is limited to assistance “in representing” another person by “personal presence” at an “appearance” before the United States. Different in scope from sections 207(a) and 207(b)(i), it does not apply to assistance in connection with an oral or written communication made with an intent to influence which does not involve an appearance. Nor does it bar assistance in preparation for either a formal or informal personal appearance or an appearance by written submission in a formal proceeding where the former employee is not personally present before the Government or a Government employee. The provision is designed to prevent the former Senior Employee from playing any auxiliary role during a negotiation proceeding or similar transaction with the Government so that he or she does not appear to be lending personal influence to the resolution of a matter and cannot do so in fact.

*Example 1:* A former Senior Employee makes suggestions as to the content of a letter to be sent to the Government on a matter in which he had participated. No violation occurs.

(c) *Managerial and other off-scene assistance.* The statute does not prohibit a former Senior Employee’s advice and assistance to his or her organization’s representatives which does not involve his or her personal presence at an appearance before the Government. The former Senior Employee’s preparation of documents to be presented in any formal or informal proceeding does not constitute personal presence at an appearance, even where submission of such a document might technically constitute an appearance.

*Example 1:* A former Senior Employee attends a hearing on a matter in which she had participated personally and substantially while in the Government. She speaks with the representative of a private party during

the hearing. A violation occurs if the former Senior Employee lends assistance to the representative in that conversation.

*Example 2:* A Senior Justice Department lawyer personally works on an antitrust case against Z Company. After leaving the Department, she is asked to discuss legal strategy with lawyers representing Z Company on that same antitrust case, to write portions of a brief and to direct the research of the staff working on the case. Any such aid would not be prohibited by the statute, but would likely be prohibited by professional disciplinary rules.

(d) *Representational assistance.* The statute seeks to prevent a former Senior Employee from making unfair use of his or her prior governmental position by prohibiting all forms of assistance in the representation of another when personally present at an appearance, including giving advice as to how the representation in an appearance should be conducted, supplying information, participating in drafting materials, or dealing with forensic or argumentative matters (such as testimony, methods of persuasion, or strategy of presentation).

(e) *Measurement of restriction period.* The statutory two-year period is measured from the date of termination of employment in the Senior Employee position held by the former employee when he or she participated personally and substantially in the matter involved. (cf. § 2637.202(e))

(f) *Other Essential Requirements.* All conditions of the statutory prohibition must be met. Specifically, the former employee, (1) must have been a “Senior Employee,” (2) who “participated personally and substantially” (See § 2637.201(d) of this part) in (3) a “particular matter involving a specific party.” (See subpart § 2637.201(c) of this part.)

(g) *General Examples:*

*Example 1:* A Senior Federal Trade Commission Employee, an economist by profession, participates in an investigation involving X Company, and a proceeding is commenced against X Company based on the investigation. After leaving the Commission, he offers to serve as a consultant to the lawyers for X Company on certain economic matters involved in the proceeding. He attends the proceeding and at the close of each day, meets in the lawyers’ office to advise them. Such conduct violates the statute.

*Example 2:* A Senior Employee of the Department of the Treasury participates in a number of projects with universities and financial research institutions funded by Government grants. After leaving the Government, she becomes dean of a graduate school of business which performs work under a number of such grants. She may, in the discharge of her duties, supervise research and advise as to how funds under such a contract should be allocated, whether or not these matters are, as is likely, communicated to her former Department by the graduate school's representatives. (See § 2637.204.)

*Example 3:* A Senior Defense Department official participated personally and substantially in a contract award to F Company for fighter planes. After leaving the Department, the former official goes to work for F Company. Subsequently, F Company desires to renegotiate prices and a pension provision on the fighter plane contract, matters in which dispute is anticipated. The former official could not attend a meeting with Government employees at which such matters will be discussed and give assistance to those representing F Company in the negotiations. He could generally render advice as long as he remained absent from the negotiations.

*Example 4:* A Senior Justice Department lawyer participated in an antitrust case against Q Company, which is represented by Y law firm. Immediately after leaving, the Department, she goes to work with Y law firm, and assists at a trial representing Q Company in a different antitrust case, not involving the allegations in the Government case. Such assistance would not be barred because it does not occur in connection with the same particular matter.

*Example 5:* A Senior Employee of the Department of Health and Human Services leaves to take a university position. The former official's new duties include various HHS contracts which the university holds. Some of the contracts were awarded by a division within HHS which was under her official responsibility. She is not barred from assistance in negotiations with respect to such contracts, because the restriction applies only to those matters in which she had participated personally and substantially, not to those matters for which she had official responsibility. Note, however, that any participation by her as a representative would be barred by 18 U.S.C. 207(b)(1) as described in § 2637.202 of this part. (But see § 2637.204.)

*Example 6:* A Senior scientist with the Food and Drug Administration was personally and substantially involved in a licensing proceeding concerning a specific drug. After leaving the FDA, he is employed by the manufacturer of the drug. There he engages in research, indicating that the drug is safe and effective, which his employer later presents to FDA in connection with the proceeding. He assists during this presentation. Such as-

sistance would normally be restricted but may be allowed to the extent that the former official is furnishing scientific information to the Government. (See 18 U.S.C. 207(f) and § 2637.206 of this part.)

*Example 7:* A former Senior Employee of the Federal Communications Commission leaves the agency to join a graduate school faculty. In one of his courses, which from time to time includes Government employees, he discusses, unfavorably to the Commission, a specific licensing case in which he was personally and substantially involved. The restriction does not apply because the conduct does not occur in connection with any representational activities.

**§ 2637.204 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.**

(a) *Basic prohibition of 18 U.S.C. 207(c).* For a period of one year after terminating employment by the United States, no former Senior Employee (other than a special Government employee who serves for fewer than sixty days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent, anyone in any formal or informal appearance before, or with the intent to influence, make any written or oral communication on behalf of anyone to (1) his or her former department or agency, or any of its officers or employees, (2) in connection with any particular Government matter, whether or not involving a specific party, which is pending before such department or agency, or in which it has a direct and substantial interest.

(b) *Transactions exempted from the basic prohibition of 18 U.S.C. 207(c).* The prohibition set forth above shall not apply to an appearance, a communication, or representation by a former Senior Employee, who is:

(1) An elected official of a State or local government, acting on behalf of such government, or

(2) Whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under