

*Example 3:* A former Senior Employee may recommend an individual to her former agency for employment, based on her own personal knowledge of the individual's qualifications and character.

(j) *Measurement of one-year restriction period.* The statutory one-year period is measured from the date when the individual's responsibility as a Senior Employee in a particular agency ends, not from the termination of Government service, unless the two occur simultaneously. (See § 2637.202(e).)

**§ 2637.205 Limitation of restrictions of 18 U.S.C. 207(c) to less than that whole of a department or agency.**

(a) *Authority.* There are two methods by which the application of the one-year "cooling-off" prohibition of 18 U.S.C. 207(c) may be limited to less than the entirety of a department or agency. First, 18 U.S.C. 207(e) provides that the Director may by rule designate as "separate" a statutory agency or bureau which exercises functions that are distinct and separate from the remaining functions of the parent department or agency of which it is part. (see § 2637.214) Second, under the provisions of 18 U.S.C. 207(d)(1)(C), the Director may restrict the application of the prohibition as to a former employee (other than one who served in an Executive Level position or at a uniformed service grade level of 0–9 and above) insofar as it affects his or her communications with persons in an unrelated agency or bureau within his former parent department or agency which has separate and distinct subject matter jurisdiction from the agency or bureau in which he or she served. (see § 2637.215)

(b) *Distinctions between the 18 U.S.C. 207(e) and 207(d)(1)(C) provisions.* (1) The authority granted by 18 U.S.C. 207(e) is applicable solely to a separate statutory agency or bureau, that is, one created by statute or the functions of which are expressly referred to by statute in such a way that it appears that Congress intended that its functions were to be separable. A determination made under this 18 U.S.C. 207(e) does not, however, benefit former heads of the separate statutory agency or bureau. Such a determination does, however, work to the benefit of other employees

at Executive Level or at uniformed service grade level of 0–9 or above.

(2) The determination made pursuant to section 207(d)(1)(C) is intended to provide similar recognition of separability where the subordinate agency or bureau has been *administratively* created. A determination of such separability does inure to the benefit of the head of the separate component if he is a Senior Employee designated by the Director. However, the determination is not beneficial to persons, including the head of a separate component, in positions at Executive Level or serving at uniformed service grade level of 0–9 above.

(c) *Separate Statutory Components—(1) Procedure.* Each agency shall notify the Director, in writing, of any separate statutory agency or bureau which it desires to submit for such designation under 18 U.S.C. 207(e), providing:

(i) A description of the functions of the agency or bureau, indicating the basis on which such functions are claimed to be distinct and separate from the parent organization;

(ii) The separate statutory basis of the agency or bureau; and

(iii) Identification of those positions in the parent agency with official responsibility for supervision of such separate statutory agency or bureau.

(2) *Standards.* A parent agency may propose as a "separate" statutory agency an agency or bureau (i) created specifically by statute, (ii) the functions of which are expressly referred to by statute in such a way as to indicate that a separate component was intended or (iii) which is the successor to either of the foregoing; but a decision as to the sufficiency of the statutory authority as well as the separability of functions shall be reserved to the Director, OGE.

(3) *Effect of designation.* If a subordinate part of an agency is designated as "separate" by the Director, then Senior Employees of such separate agency and those of the parent agency are not subject to the restrictions of section 207(c) as to each others' agencies—except that the prohibition of section 207(c) remains applicable to the former head of a "separate" subordinate agency and to former Senior Employees of

the parent agency whose official responsibility included supervision of the subordinate agency.

*Example 1:* A former Senior Employee of the Product Agency in Executive Department leaves and joins a law firm which represents Q Corporation. Product Agency has been designated by the Director as separate from Executive Department. The former employee is not restricted from representing the Q Corporation on a new matter before the Executive Department.

(d) *Separate Nonstatutory Components—(1) Procedure.* Each agency may notify the Director, in writing, of a component agency, bureau or office having separate and distinct subject matter jurisdiction which it desires to submit for designation under 18 U.S.C. 207(d)(1)(C), providing:

(i) A description of the subject matter jurisdiction of such component, indicating the basis on which such jurisdiction is claimed to be separate and distinct from certain other agencies, bureaus and offices of the parent agency;

(ii) A description of the nature of the connections and interactions between such component and certain other agencies, bureaus or offices of the parent agency indicating the basis on which the component is claimed to be unrelated;

(iii) A statement of the basis on which it is claimed that no potential exists for use by former Senior Employees of such component of undue influence or unfair advantage with respect to the named other agencies, bureaus or offices of the parent agency, based on past Government service; and

(iv) Identification of those organizational units of the parent agency having administrative or operational authority over such component agency, bureau or office.

(2) *Standards.* (i) A parent agency may propose as “separate” from other parts of a department or agency any agency or bureau having subject matter jurisdiction separate and distinct from one or more other portions of the department or agency accompanied by a showing that there would be no potential for use of undue influence or unfair advantage based upon past Government service if a former employee of one such subordinate agency or bu-

reau communicated with employees of such other portions of the department or agency.

(ii) A determination under this section rests solely with the Director, OGE, and is available only for those subordinate components which would, but for the lack of a statutory basis, qualify for separate agency treatment under 18 U.S.C. 207(e).

(iii) Where one component has supervisory authority over another, the two components may not be considered separate and distinct for purposes of this section.

(iv) The requirement of “separate and distinct subject matter jurisdiction” may be met in at least two ways. First, the substantive areas of coverage may be distinct. For example, an office or bureau within the parent agency may handle only maritime matters. Second, the regional area of coverage may be different. For example, one regional office may, on appropriate facts, be considered separate and distinct from other regional offices and from the parent agency—except for the bureau or office in the parent agency which is responsible for its supervision.

(v) It is necessary to specify the “unrelated agency or bureau within the same department or agency” as to which it is recommended that post employment communication be permitted. For example, one bureau may involve a subject matter distinct from some, but not all, parts of the parent department. Attempts to fractionalize a department could, however, become deeply complicated and involve difficult judgments and fact-finding. OGE will not usually act on such cases, and submissions should be confined to relatively clear cases.

(3) *Effect of determination.* If a component agency, bureau or office is determined to be separate by the Director, then Senior Employees of such component are not subject to the restrictions of 18 U.S.C. 207(c) and § 2637.204 as to the remaining agencies, bureaus or offices of the parent agency (except certain such agencies, bureaus or offices as specified in § 2637.215)—except that the prohibition of section 207(c) and § 2637.204 shall remain applicable (i) to those former Senior Employees of such

component who served in positions designated by 18 U.S.C. 207(d)(1)(A) and (B) and (ii) to former Senior Employees of such component with respect to the parent agency (as defined in § 2637.205(e)). Such limited application of 18 U.S.C. 207(c) may be available for the head of a separate component, unlike the limitation of 18 U.S.C. 207(e), as determined by the Director.

*Example 1:* In the Department of Justice, while the Antitrust Division may be “separate” from other Divisions, it is not separate from the immediate office of the Attorney General.

**§ 2637.206 Exemption for scientific and technological information.**

(a) *Exemption.* The making of communications solely for the purpose of furnishing scientific or technological information pursuant to agency procedures is exempt from all prohibitions and restrictions set forth in §§ 2637.201–2637.204 of these regulations (subsections (a), (b), and (c) of 18 U.S.C. 207). This exemption allows the free exchange of such information regardless of a former Government employee’s prior participation in or responsibility for the matter. The former Senior Employee should not argue for the acceptance of a proposal. The exemption is not limited to communications constituting the furnishing of information, but includes those “for the purpose of” doing so. No violation occurs when, for example, a former Government employee working on a project makes contact to determine the kind and form of information required, or the adequacy of information already supplied, so long as agency procedures are satisfied.

*Example 1:* A project manager, regardless of prior involvement in a particular matter, may contact the Government to determine deficiencies in system design or performance, furnish scientific or technological information relating to a solution or approach to a problem, seek related information from the Government; advise and supervise others who are involved as to such matters; and meet with Government technical experts for such purpose; provided in each case that there is compliance with such agency regulations as have been issued.

(b) *Necessary information.* Scientific and technological information includes feasibility, risk, cost, and speed of im-

plementation, when necessary to appreciate fairly the practical significance of the information. The Government may and should be fully informed of the significance of scientific and technological alternatives.

(c) *Intent to influence.* The furnishing of meritorious or convincing scientific or technological proposals does not constitute an intent to influence. (See § 2637.201(b)(7) of this part.)

(d) *Expert testimony.* This exemption does not include testimony as an “expert” in adversary proceedings in a matter in which the United States is involved or has an interest. Such testimony is governed by regulations set forth in § 2637.208. As to assistance as an expert or consultant, see § 2637.203(g), Example 7.

(e) *Agency responsibility for procedures.* The primary responsibility for developing procedures to guide activity under this exemption lies with each agency, so that such procedures comport with the particular characteristics of agency programs and needs. Such procedures will be reviewed periodically by the Director. In promulgating procedures, an agency may take into consideration: Limiting communications to certain formats which are least conducive to the use of personal influence; segregating, to the extent possible, meetings and presentations involving matters of technical substance from those involving other aspects of the relationship; requiring that the designated agency ethics official be informed of instances where the exemption is used; or employing more restrictive practices in circumstances involving either immediate competition for contracts or applications for grants than in those involving an ongoing project.

**§ 2637.207 Exemption for persons with special qualification in a technical discipline.**

(a) *Applicability.* A former Government employee may be exempted from the restrictions on post employment practices if the head of the agency concerned with the particular matter, in consultation with the Director, executes a certification published in the FEDERAL REGISTER that such former Government employee has outstanding