

Special Government Employee is compensated or not.

(d) *Senior Employee* means an employee or officer as designated in the statute or by the Director of the Office of Government Ethics. The Director of the Office of Government Ethics has designated civilians who have significant decision-making or supervisory responsibility and are paid at or equivalent to GS-17 or above as Senior Employees. Civilians paid at the Executive level are automatically designated by statute as Senior Employees. (A list of Senior Employee positions is found at 5 CFR 737.33.)

§ 1304.4605 Post-employment restrictions.

(a) General Restrictions Applicable to All Former Government Employees:

(1) *Permanent Bar*. A former Government employee is restricted from acting as a representative before an agency as to a particular matter involving a specific party if the employee participated personally and substantially in that matter as a Government employee. The government employee is also restricted from making any oral or written communication to an agency with the intent to influence on behalf of another person as to a particular matter involving a specific party if the former Government employee participated personally and substantially in that matter as a Government employee.

(2) *Two-Year Bar*. (i) A former Government employee is restricted for two years from acting as a representative before an agency as to a particular matter involving a specific party if the employee had official responsibility for that matter. The former Government employee is also restricted for two years from making any oral or written communication to any agency with the intent to influence on behalf of another person as to a particular matter involving a specific party if the employee had official responsibility for that matter.

(ii) In order to be a matter for which the former Government employee had official responsibility, the matter must actually have been pending under the employee's responsibility within the

period of one year prior to the termination of such responsibility.

(iii) The statutory two-year restriction period is measured from the date when the employee's responsibility for a particular matter ends, not from the termination of Government service.

(b) Restrictions Applicable Only to Former Senior Employees:

(1) *Two-Year Bar on Assisting in Representing*. (i) A former Senior Employee is restricted for two years from assisting in representing another person by personal appearance before an agency as to a particular matter involving a specific party if the former Senior Employee participated personally and substantially in that matter as a Government employee.

(ii) The statutory two-year period is measured from the date of termination of employment in the position that was held by the Senior Employee when he participated personally and substantially in the matter involved.

(2) *One-Year Bar on Attempts to Influence Former Agency*. (i) A former Senior Employee is restricted for one year from any transactions with the former agency on a particular matter with the intent to influence the agency, regardless of the former Senior Employee's prior involvement in that matter.

(ii) This restriction is aimed at the possible use of personal influence based on past Government affiliations in order to facilitate transaction of business. Therefore, it includes matters which first arise after a Senior Employee leaves Government service.

(iii) The restriction applies whether the former Senior Employee is representing another or representing himself, either by appearance before an agency or through communication with that agency.

(c) OFPP is a separate agency for purposes of the foregoing restrictions on post-employment activities.

§ 1304.4606 Exemptions.

(a) *General*. (1) Communications made solely to furnish scientific or technological information are exempt from these prohibitions.

(2) A former Government employee may be exempted from the restrictions on post-employment practices if the

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Deputy Director of OMB, in consultation with the Director of the Office of Government Ethics, executes a certification that is published in the FEDERAL REGISTER. The certification shall state that the former Government employee has outstanding qualifications in a scientific, technological or other technical discipline; is acting with respect to a particular matter which requires such qualifications; and the national interest would be served by his participation.

(b) *Specific.* The one-year bar shall not apply to a former Senior Employee's representation on new matters if the former Senior Employee is:

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

(2) Regularly employed by or acting on behalf of an agency or instrumentality of a State or local government; an accredited, degree-granting institution of higher education; or a non-profit hospital or medical research organization.

§ 1304.4607 Advice to former Government employees.

The Office of General Counsel, OMB, has the responsibility for providing assistance promptly to former Government employees who seek advice on specific problems.

§ 1304.4608 Administrative Enforcement Procedures (18 U.S.C. 207(j); 5 CFR 737.27).

(a) Whenever an allegation is made that a former Government employee has violated 18 U.S.C. 207(a), (b) or (c) or any of the regulations promulgated thereunder by the Office of Government Ethics or by OMB, the allegation and any supporting evidence shall be transmitted through the Office of General Counsel to the Deputy Director, OMB.

(b) Allegations and evidence shall be safeguarded so as to protect the privacy of former employees prior to a determination of sufficient cause to initiate an administrative disciplinary proceeding.

(c) If review by the Office of General Counsel, OMB, shows that the information concerning a possible violation does not appear to be frivolous, the

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Deputy Director, OMB, shall expeditiously provide all relevant evidence, any appropriate comments, and copies of applicable agency regulations to the director, Office of Government Ethics, and to the Criminal Division, Department of Justice. Unless the Department of Justice informs OMB that it does not intend to initiate criminal prosecution, OMB shall coordinate any investigation or administrative action with the Department of Justice in order to avoid prejudicing criminal proceedings.

(d) After appropriate review and recommendation by the Office of General Counsel, if the Deputy Director, OMB, determines that there is reasonable cause to believe that there has been a violation, the Deputy Director may direct the Office of General Counsel to initiate an administrative disciplinary proceeding and may designate an individual to represent OMB in the proceeding.

(e) *Notice.* The Office of General Counsel shall provide the former Government employee with adequate notice of its intention to institute a proceeding and with an opportunity for a hearing. The notice must include a statement of allegations, and the basis thereof, in sufficient detail to enable the former Government employee to prepare an adequate defense; notification of the right to a hearing; and an explanation of the method by which a hearing may be requested.

(f) *Hearing.* A hearing may be obtained by submitting a written request to the Office of General Counsel.

(g) *Examiner.* The presiding official at the proceedings shall be the hearing examiner, who is delegated authority by the Director, OMB, to make an initial decision. The hearing examiner shall be an attorney in the Office of General Counsel designated by the General Counsel. The hearing examiner shall be impartial and shall not have participated in any manner in the decision to initiate the proceedings.

(h) *Time, Date and Place.* The hearing shall be conducted at a reasonable time, date, and place. The hearing examiner shall give due regard in setting the hearing date to the former Government employee's need for adequate time to properly prepare a defense and