

§ 2637.101

5 CFR Ch. XVI (1–1–08 Edition)

2637.202 *Two-year restriction on any former government employee's acting as representative as to a particular matter for which the employee had official responsibility.*

- (a) 18 U.S.C. 207(b)(i).
- (b) Official responsibility.
 - (1) Definition.
 - (2) Determining official responsibility.
 - (3) Ancillary matters and official responsibility.
 - (4) Knowledge of matter pending required.
 - (5) Self-disqualification.
 - (c) "Actually pending."
 - (d) Other essential requirements.
 - (e) Measurement of two-year restriction period.

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) 18 U.S.C. 207(b)(ii).
- (b) Limitation to "representational" assistance by "personal presence" at an appearance.
- (c) Managerial and other off-scene assistance.
- (d) Representational assistance.
- (e) Measurement of restriction period.
- (f) Other essential requirements.
- (g) General examples.

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

- (a) 18 U.S.C. 207(c).
- (b) Transactions exempted from 18 U.S.C. 207(c).
- (c) No prior involvement required.
- (d) Specific parties unnecessary.
- (e) Element of controversy or influence required.
- (f) Agency activity or interest in matter.
- (g) Application or proposals for funding of research.
- (h) Personal matters.
- (i) Statements based on special knowledge.
- (j) Measurement of one-year restriction period.

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

- (a) Authority.
- (b) Distinctions between 18 U.S.C. 207(e) and 207(d)(1)(C).
- (c) Separate Statutory Components.
 - (1) Procedure.
 - (2) Standards.
 - (3) Effect of designation.
- (d) Separate nonstatutory components.
 - (1) Procedure.
 - (2) Standards.
 - (3) Effect of determination.

2637.206 *Exemption for scientific and technological information.*

- (a) Exemption.
- (b) Necessary information.
- (c) Intent to influence.

- (d) Expert testimony.
- (e) Agency responsibility for procedures.

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

- (a) Applicability.
- (b) When appropriate.
- (c) Certification authority.
- (d) Agency registry.

2637.208 *Testimony and statements under oath or subject to penalty of perjury.*

- (a) Statutory basis.
- (b) Applicability.
- (c) Statements under penalty of perjury.

2637.209 *Partners of present or former government employees.*

- (a) Scope.
- (b) Imputation.

2637.210 *Officials of a state; officials of corporations created by an act of Congress and public international organizations.*

2637.211 *Senior employee designations.*

- (a) Definitions.
- (b) Designation procedures.
 - (1) Positions at GS–17 and 18 level, SES and pay grades 0–7 and 0–8.
 - (2) Standards for designation and exemption.
 - (3) Senior Executive Service.
 - (4) "Rate of pay".
 - (c) Differential designation.
 - (d) Fair notice of designation.
 - (e) "Acting" or temporary positions.
 - (f) Special Government Employee.
 - (g) Publication.
 - (h) Computation of time.
 - (i) Position Shifting.
 - (j) Revocation of designations.

2637.212 *Administrative enforcement proceedings.*

- (a) Basic Procedures.
 - (1) Delegation.
 - (2) Initiation of administrative disciplinary hearing.
 - (3) Adequate notice.
 - (4) Presiding official.
 - (5) Time, date and place.
 - (6) Hearing rights.
 - (7) Burden of proof.
 - (8) Hearing decision.
 - (9) Administrative sanctions.
 - (10) Judicial review.
 - (11) Consultation and review.

2637.213 *Effective date of restrictions.*

- (a) Persons affected.
- (b) Fair notice of substantive changes.

2637.214 *Separate statutory agencies: Designations.*

2637.215 *Separate components of agencies or bureaus: Designations.*

2637.216 *"Senior Employee" designations.*

Subpart A—General Provisions

§ 2637.101 Purpose and policy.

- (a) *Authority.* Section 401(a) of the Ethics in Government Act of 1978 (the

“Act”), as amended by Public Law 100-598 (Nov. 3, 1988), established the Office of Government Ethics (“OGE”) as a separate agency in the executive branch, effective October 1, 1989. (OGE was formerly a part of the Office of Personnel Management (“OPM”). Sections 402 (a) and (b) of the Act, as amended, provide that the Director of the Office of Government Ethics (“the Director”) shall provide, in consultation with OPM, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency as defined in section 105 of title 5, United State Code, and shall propose, in consultation with the Attorney General and OPM, rules and regulations to be promulgated by the President or by OGE pertaining to conflicts of interest and ethics in the executive branch. The purpose of this part is to issue regulations prepared by the Director which give content to the restrictions on post employment activity established by title V of the Act (18 U.S.C. 207) for administrative enforcement with respect to former officers and employees of the executive branch; generally to guide agencies in exercising the administrative enforcement authority reflected in section 18 U.S.C. 207(j); to set forth the procedures to be employed in making certain determinations and designations pursuant to the Act; and to provide guidance to individuals who must conform to the law. Criminal enforcement of the provisions of 18 U.S.C. 207 remains the exclusive responsibility of the Attorney General.

(b) *Consultation with the Attorney General.* In proposing these regulations, the Director consulted with the Attorney General as to the content of regulations governing substantive prohibitions as well as other matters. The Attorney General has advised that such regulations are consistent with his opinion as to the interpretation of the Act.

(c) *Policy and limitations.* These regulations bar certain acts by former Government employees which may reasonably give the appearance of making unfair use of prior Government employment and affiliations.

(1) When a former Government employee who has been involved with a particular matter decides to act as the representative for another person on that matter, such “switching of sides” undermines confidence in the fairness of proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive.

(2) Similarly, when a former high-level employee assists in representing another by personal presence at an appearance before the Government regarding a matter which is in dispute, such assistance suggests an attempt to use personal influence and the possible unfair use of information unavailable to others. Different considerations are involved, however, with respect to assistance given as part of customary supervisory participation in a project funded by a Government contract or grant, since a former employee’s knowledge may benefit the project and thus the Government, and regular communications with associates may properly be regarded as inherent in managerial responsibility. Such assistance, when not rendered by personal presence during an appearance, is not covered by the statute.

(3) When a former Senior Employee returns to argue a particular matter to the employee’s former agency in the period immediately following the termination of official employment, it appears that Government-based relationships are being used for private ends.

(4) Former officers and employees may fairly be required to avoid such activities in the circumstances specified by statute and in these regulations.

(5) The provisions of 18 U.S.C. 207 do not, however, bar any former Government employee, regardless of rank, from employment with any private or public employer after Government service. Nor do they effectively bar employment even on a particular matter in which the former Government employee had major official involvement except in certain circumstances involving persons engaged in professional advocacy. Former Government employees may be fully active in high-level supervisory positions whether or not the work is funded by the United States

and includes matters in which the employee was involved while employed by the Government. The statutory provisions are not intended to discourage the movement of skilled professionals in Government, to and from positions in industry, research institutions, law and accounting firms, universities and other major sources of expertise. Such a flow of skills can promote efficiency and communication between the Government and private activities, and it is essential to the success of many Government programs. Instead, only certain acts which are detrimental to public confidence in the Government are prohibited.

(6) Departments and agencies have primary responsibility for the administrative enforcement of the post employment restrictions found in the Act. The Department of Justice may initiate criminal enforcement in cases involving aggravated circumstances; agency heads are required to report substantiated allegations of violations of 18 U.S.C. 207 to the Department of Justice and the Director, OGE. It is essential that title V of the Act be enforced so as to advance its objectives, which include improvement in government efficiency, equal treatment for equal claims, greater public confidence in the integrity of their government, elimination of the use of public office for private gain, and securing the integrity of the government's policy-making processes. Departments and agencies should avoid enforcement actions that do not advance these objectives but instead frustrate the Government's ability to employ the skilled persons who are needed to make the programs of the Federal Government succeed. Special attention should be given to the need to preserve the free flow of expertise, especially in scientific, technological and other technical areas, from private activities to the government.

(7) The examples contained in these regulations are intended to give guidance, but are illustrative, not comprehensive. Each agency may provide additional illustration and guidance in its own regulations, consistent with that contained herein, in order to address specific problems arising in the

context of a particular agency's operations.

(8) Agencies have the responsibility to provide assistance promptly to former Government employees who seek advice on specific problems. The Office of Government Ethics will provide advice, promptly, upon request, to designated agency ethics officials in such situations, but will first coordinate with the Department of Justice on unresolved or difficult issues.

(9) These regulations do not supplant restrictions that may be contained in laws other than 18 U.S.C. 207 and do not incorporate restrictions contained in the code of conduct of a profession of which an employee may be a member.

[45 FR 7406, Feb. 1, 1980; 45 FR 9253, Feb. 12, 1980, as amended at 49 FR 33118, Aug. 21, 1984; 50 FR 1203, Jan. 10, 1985. Redesignated at 54 FR 50230, Dec. 5, 1989; 55 FR 27179, July 2, 1990; 55 FR 27933, July 6, 1990]

§ 2637.102 Definitions.

(a) *Statutory definitions.* The following are defined terms which largely repeat portions of the text of the statute. They are set out here to permit a simplified presentation of statutory requirements in the regulations which follow. Other definitions, which supplement the statutory language, are listed in paragraph (b) of this section and are set forth in detail in the substantive regulations.

(1) *United States or Government* means any department, agency, court, court-martial, or any civil, military or naval commission of the United States, the District of Columbia, or any officer or employee thereof.

(2) *Agency* includes an Executive Department, a Government corporation and an independent establishment of the executive branch, which includes an independent commission. (See 18 U.S.C. 6.)

(3) *Government Employee* includes any officer or employee of the Executive Branch (as defined in 18 U.S.C. 202 and, e.g., 5 U.S.C. 2104 and 2105); those appointed or detailed under 5 U.S.C. 3374, and a Special Government Employee, but shall not include an individual performing services for the United States as an independent contractor under a personal service contract.