

Office of Government Ethics

§ 2641.302

(7) 50 U.S.C. app. 463, permitting former employees appointed to certain positions under 50 U.S.C. app. 451 *et seq.* (Military Selective Service Act) to engage in conduct notwithstanding 18 U.S.C. 207; and

(8) Public Law 97-241, title I, section 120, August 24, 1982 (18 U.S.C. 203 note), providing that 18 U.S.C. 207 shall not apply under certain circumstances to private sector representatives on United States delegations to international telecommunications meetings and conferences.

NOTE TO PARAGRAPH (k): Exceptions from 18 U.S.C. 207 may be included in legislation

mandating privatization of Governmental entities. *See*, for example, 42 U.S.C. 2297h-3(c), concerning the privatization of the United States Enrichment Corporation.

(1) *Guide to available exceptions and waivers to the prohibitions of 18 U.S.C. 207.* This chart lists the exceptions and waivers set forth in 18 U.S.C. 207 and for each exception and waiver identifies the prohibitions of section 207 excepted or subject to waiver. Detailed guidance on the applicability of the exceptions and waivers is contained in the cross-referenced paragraphs of this section.

Exception/waiver	Section 207 Prohibitions affected						
	(a)(1)	(a)(2)	(b)	(c)	(d)	(f)	(l)
(1) Acting for the United States, <i>see</i> § 2641.301(a)	•	•	•	•	•	•	•
(2) Elected State or local government official, <i>see</i> § 2641.301(b)	•	•	•	•	•	•	•
(3) Acting for specified entities, <i>see</i> § 2641.301(c)				•	•		
(4) Special knowledge, <i>see</i> § 2641.301(d)				•	•		
(5) Scientific or technological information, <i>see</i> § 2641.301(e)	•	•		•	•		
(6) Testimony, <i>see</i> § 2641.301(f)	•	•	•	•		•	•
(7) Acting for a candidate or political party, <i>see</i> § 2641.301(g)				•	•		
(8) Acting for an international organization, <i>see</i> § 2641.301(h)	•	•	•	•	•	•	•
(9) Employee of a Government-owned, contractor-operated entity, <i>see</i> § 2641.301(i)	•	•	•	•	•	•	•
(10) Waiver for certain positions, <i>see</i> § 2641.301(j)				•		•	

§ 2641.302 Separate agency components.

(a) *Designation.* For purposes of 18 U.S.C. 207(c) only, and § 2641.204, the Director of the Office of Government Ethics may designate agency “components” that are distinct and separate from the “parent” agency and from each other. Absent such designation, the representational bar of section 207(c) extends to the whole of the agency in which the former senior employee served. An eligible former senior employee who served in the parent agency is not barred by section 207(c) from making communications to or appearances before any employee of any designated component of the parent, but is barred as to any employee of the parent or of any agency or bureau of the parent that has not been designated. An eligible former senior employee who served in a designated component of the parent agency is barred from communicating to or making an appearance before any employee of that designated component, but is not barred as to any employee of the par-

ent, of another designated component, or of any other agency or bureau of the parent that has not been designated.

Example 1 to paragraph (a): While employed in the Office of the Secretary of Defense, a former career Senior Executive Service employee was employed in a position for which the rate of basic pay exceeded 86.5 percent of that payable for level II of the Executive Schedule. He is prohibited from contacting the Secretary of Defense and DOD’s Inspector General. However, because eligible under paragraph (b) of this section to benefit from component designation procedures, he is not prohibited by 18 U.S.C. 207(c) from contacting the Secretary of the Army. (The Department of the Army is a designated component of the parent, DOD. The Office of the Secretary of Defense and the Office of the DOD Inspector General are both part of the parent, DOD. *See* the listing of DOD components in appendix B to this part.)

Example 2 to paragraph (a): Because eligible under paragraph (b) of this section to benefit from component designation procedures, a former Navy Admiral who last served as the Vice Chief of Naval Operations is not prohibited by 18 U.S.C. 207(c) from contacting the Secretary of Defense, the Secretary of the Army, or DOD’s Inspector General. He is prohibited from contacting the Secretary of the

§ 2641.302

5 CFR Ch. XVI (1–12 Edition)

Navy. (The Department of the Navy is a designated component of the parent, DOD. The Office of the Secretary of Defense and the Office of the DOD Inspector General are both part of the parent. See the listing of DOD components in appendix B to this part.)

(b) *Eligible former senior employees.* All former senior employees are eligible to benefit from this procedure except those who were senior employees by virtue of having been:

(1) Employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311–5318 (the Executive Schedule) (see example 1 to paragraph (j)(1) of §2641.301);

(2) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(B); or

(3) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(B).

Example 1 to paragraph (b): A former senior employee who had served as Deputy Commissioner of the Internal Revenue Service is not eligible to benefit from the designation of components for the Department of the Treasury because the position of Deputy Commissioner is listed in 5 U.S.C. 5316, at a rate of pay payable for level V of the Executive Schedule.

(c) *Criteria for designation.* A component designation must be based on findings that:

(1) The component is an agency or bureau, within a parent agency, that exercises functions which are distinct and separate from the functions of the parent agency and from the functions of other components of that parent as shown by relevant factors which may include, but are not limited to:

(i) The component's creation by statute or a statutory reference indicating that it exercises functions which are distinct and separate;

(ii) The component's exercise of distinct and separate subject matter or geographical jurisdiction;

(iii) The degree of supervision exercised by the parent over the component;

(iv) Whether the component exercises responsibilities that cut across organizational lines within the parent;

(v) The size of the component in absolute terms; and

(vi) The size of the component in relation to other agencies or bureaus within the parent.

(2) There exists no potential for the use of undue influence or unfair advantage based on past Government service.

(d) *Subdivision of components.* The Director will not ordinarily designate agencies that are encompassed by or otherwise supervised by an existing designated component.

(e) *Procedures.* Distinct and separate components shall be designated in accordance with the following procedure:

(1) *Agency recommendation.* A designated agency ethics official may, at any time, recommend the designation of an additional component or the revocation of a current designation by forwarding a written request to the Director of the Office of Government Ethics addressing the criteria set forth in paragraph (c) of this section.

(2) *Agency update.* Designated agency ethics officials shall, by July 1 of each year, forward to the OGE Director a letter stating whether components currently designated should remain designated in light of the criteria set forth in paragraph (c) of this section.

(3) *Action by the Office of Government Ethics.* The Director of the Office of Government Ethics shall, by rule, make or revoke a component designation after considering the recommendation of the designated agency ethics official. The Director shall maintain a listing of all designated agency components in appendix B to this part.

(f) *Effective dates.* A component designation shall be effective on the date the rule creating the designation is published in the FEDERAL REGISTER and shall be effective as to individuals who terminated senior service either before, on or after that date. Revocation of a component designation shall be effective 90 days after the publication in the FEDERAL REGISTER of the rule that revokes the designation, but shall not be effective as to individuals who terminated senior service prior to the expiration of such 90-day period.

(g) *Effect of organizational changes.* (1) If a former senior employee served in an agency with component designations and the agency or a designated component that employed the former senior employee has been significantly altered by organizational changes, the appropriate designated agency ethics

Office of Government Ethics

Pt. 2641, App. B

official shall determine whether any successor entity is substantially the same as the agency or a designated component that employed the former senior employee. Section 2641.204(g)(2)(iv)(A) through (g)(2)(iv)(C) should be used for guidance in determining how the 18 U.S.C. 207(c) bar applies when an agency or a designated component has been significantly altered.

(2) *Consultation with Office of Government Ethics.* When counseling individuals concerning the applicability of 18 U.S.C. 207(c) subsequent to significant organizational changes, the appropriate designated agency ethics official (DAEO) shall consult with the Office of Government Ethics. When it is determined that appendix B to this part no longer reflects the current organization of a parent agency, the DAEO shall promptly forward recommendations for designations or revocations in accordance with paragraph (e) of this section.

Example 1 to paragraph (g): An eligible former senior employee had served as an engineer in the Agency for Transportation Safety, an agency within Department X primarily focusing on safety issues relating to all forms of transportation. The agency had been designated as a distinct and separate component of Department X by the Director of the Office of Government Ethics. Subsequent to his termination from the position, the functions of the agency are distributed among three other designated components with responsibilities relating to air, sea, and land transportation, respectively. The agency's few remaining programs are absorbed by the parent. As the designated component from which the former senior employee terminated is no longer identifiable as substantially the same entity, the 18 U.S.C. 207(c) bar will not affect him.

Example 2 to paragraph (g): A scientist served in a senior employee position in the Agency for Medical Research, an agency within Department X primarily focusing on cancer research. The agency had been designated as a distinct and separate component of Department X by the Director of the Office of Government Ethics. Subsequent to her termination from the position, the mission of the Agency for Medical Research is narrowed and it is renamed the Agency for Cancer Research. Approximately 20% of the employees of the former agency are transferred to various other parts of the Department to continue their work on medical research unrelated to cancer. The Agency for Cancer Research is determined to be sub-

stantially the same entity as the designated component in which she formerly served, and the 18 U.S.C. 207(c) bar applies with respect to the scientist's contacts with employees of the Agency for Cancer Research. She would not be barred from contacting an employee who was among the 20% of employees who were transferred to other parts of the Department.

(h) *Unauthorized designations.* No agency or bureau within the Executive Office of the President may be designated as a separate agency component.

APPENDIX A TO PART 2641—POSITIONS WAIVED FROM 18 U.S.C. 207(C) AND (F)

Pursuant to the provisions of 18 U.S.C. 207(c)(2)(C) and 5 CFR 2641.301(j), each of the following positions is waived from the provisions of 18 U.S.C. 207(c) and 5 CFR 2641.204, as well as the provisions of 18 U.S.C. 207(f) and 5 CFR 2641.206. All waivers are effective as of the date indicated.

Agency: Department of Justice

Positions:

United States Trustee (21) (effective June 2, 1994).

Agency: Securities and Exchange Commission

Positions:

Solicitor, Office of General Counsel (effective October 29, 1991).

Chief Litigation Counsel, Division of Enforcement (effective October 29, 1991).

Deputy Chief Litigation Counsel, Division of Enforcement (effective November 10, 2003).

SK-17 positions (effective November 10, 2003).

SK-16 and lower-graded SK positions supervised by employees in SK-17 positions (effective November 10, 2003).

SK-16 and lower-graded SK positions not supervised by employees in SK-17 positions (effective December 4, 2003).

APPENDIX B TO PART 2641—AGENCY COMPONENTS FOR PURPOSES OF 18 U.S.C. 207(C)

Pursuant to the provisions of 18 U.S.C. 207(h), each of the following agencies is determined, for purposes of 18 U.S.C. 207(c), and 5 CFR 2641.204, to have within it distinct and separate components as set forth below. Except as otherwise indicated, all designations are effective as of January 1, 1991.

Parent: Department of Commerce

Components:

Bureau of the Census.

Bureau of Industry and Security (formerly Bureau of Export Administration) (effective January 28, 1992).

Economic Development Administration.

International Trade Administration.
 Minority Business Development Agency (formerly listed as Minority Business Development Administration).
 National Institute of Standards and Technology (effective March 6, 2008).
 National Oceanic and Atmospheric Administration.
 National Technical Information Service (effective March 6, 2008).
 National Telecommunications and Information Administration.
 United States Patent and Trademark Office (formerly Patent and Trademark Office).

Parent: Department of Defense

Components:

Department of the Air Force.
 Department of the Army.
 Department of the Navy.
 Defense Information Systems Agency.
 Defense Intelligence Agency.
 Defense Logistics Agency.
 Defense Threat Reduction Agency (effective February 5, 1999).
 National Geospatial-Intelligence Agency (formerly National Imagery and Mapping Agency) (effective May 16, 1997).
 National Reconnaissance Office (effective January 30, 2003).
 National Security Agency.

Parent: Department of Energy

Component:

Federal Energy Regulatory Commission.

Parent: Department of Health and Human Services

Components:

Administration on Aging (effective May 16, 1997).
 Administration for Children and Families (effective January 28, 1992).
 Agency for Healthcare Research and Quality (formerly Agency for Health Care Policy and Research) (effective May 16, 1997).
 Agency for Toxic Substances and Disease Registry (effective May 16, 1997).
 Centers for Disease Control and Prevention (effective May 16, 1997).
 Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration).
 Food and Drug Administration.
 Health Resources and Services Administration (effective May 16, 1997).
 Indian Health Service (effective May 16, 1997).
 National Institutes of Health (effective May 16, 1997).
 Substance Abuse and Mental Health Services Administration (effective May 16, 1997).

*Parent: Department of the Interior*Components:¹

Bureau of Indian Affairs (effective January 28, 1992).
 Bureau of Land Management (effective January 28, 1992).
 Bureau of Reclamation (effective January 28, 1992).
 Minerals Management Service (effective January 28, 1992).
 National Park Service (effective January 28, 1992).
 Office of Surface Mining Reclamation and Enforcement (effective January 28, 1992).
 U.S. Fish and Wildlife Service (effective January 28, 1992).
 U.S. Geological Survey (effective January 28, 1992).

Parent: Department of Justice

Components:

Antitrust Division.
 Bureau of Alcohol, Tobacco, Firearms and Explosives (effective November 23, 2004).
 Bureau of Prisons (including Federal Prison Industries, Inc.).
 Civil Division.
 Civil Rights Division.
 Community Relations Service.
 Criminal Division.
 Drug Enforcement Administration.
 Environment and Natural Resources Division.
 Executive Office for United States Attorneys² (effective January 28, 1992).
 Executive Office for United States Trustees³ (effective January 28, 1992).
 Federal Bureau of Investigation.
 Foreign Claims Settlement Commission.
 Independent Counsel appointed by the Attorney General.
 Office of Justice Programs.
 Office of the Pardon Attorney (effective January 28, 1992).
 Offices of the United States Attorney (each of 94 offices).
 Offices of the United States Trustee (each of 21 offices).

¹All designated components under the jurisdiction of a particular Assistant Secretary shall be considered a single component for purposes of determining the scope of 18 U.S.C. 207(c) as applied to senior employees serving on the immediate staff of that Assistant Secretary.

²The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.

³The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.

Office of Government Ethics

Pt. 2641, App. B

Office on Violence Against Women⁴ (effective March 8, 2007).
Tax Division.
United States Marshals Service (effective May 16, 1997).
United States Parole Commission.

Parent: Department of Labor

Components:

Bureau of Labor Statistics.
Employee Benefits Security Administration (formerly Pension and Welfare Benefits Administration) (effective May 16, 1997).
Employment and Training Administration.
Employment Standards Administration.
Mine Safety and Health Administration.
Occupational Safety and Health Administration.
Office of Disability Employment Policy (effective January 30, 2003).
Pension Benefit Guaranty Corporation (effective May 25, 2011).

Parent: Department of State

Component:

Foreign Service Grievance Board.

⁴The Office on Violence Against Women shall not be considered separate from the Office of Justice Programs, but only from other designated components of the Department of Justice.

Parent: Department of Transportation

Components:

Federal Aviation Administration.
Federal Highway Administration.
Federal Motor Carrier Safety Administration (effective January 30, 2003).
Federal Railroad Administration.
Federal Transit Administration.
Maritime Administration.
National Highway Traffic Safety Administration.
Saint Lawrence Seaway Development Corporation.
Surface Transportation Board (effective May 16, 1997).

Parent: Department of the Treasury

Components:

Alcohol and Tobacco Tax and Trade Bureau (effective November 23, 2004).
Bureau of Engraving and Printing.
Bureau of the Mint.
Bureau of the Public Debt.
Comptroller of the Currency.
Financial Crimes Enforcement Center (FinCEN) (effective January 30, 2003).
Financial Management Service.
Internal Revenue Service.
Office of Thrift Supervision.

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