

responsible for all budget matters within the agency. The identification of funds for the contract is an ancillary aspect of the contract.

*Example 3 to paragraph (j):* An Internal Revenue Service (IRS) auditor worked in the office responsible for the tax-exempt status of nonprofit organizations. Subsequently, he was transferred to the IRS office concerned with public relations. When contacted by an employee of his former office for advice concerning a matter involving a certain nonprofit organization, the auditor provides useful suggestions. The auditor's supervisor in the public relations office does not have official responsibility for the nonprofit matter since it does not fall within the scope of the auditor's current duties.

*Example 4 to paragraph (j):* An information manager at the Central Intelligence Agency (CIA) assigns a nonsupervisory subordinate to research an issue concerning a request from a news organization for information concerning past agency activities. Before she commences any work on the assignment, the subordinate terminates employment with the CIA. The request was not pending under the subordinate's official responsibility since a non-supervisory employee does not have official responsibility for her own assignments. (Once the subordinate commences work on the assignment, she may be participating "personally and substantially" within the meaning of 18 U.S.C. 207(a)(1) and §2641.201(i).)

*Example 5 to paragraph (j):* A regional employee of the Federal Emergency Management Agency requests guidance from the General Counsel concerning a contractual dispute with Baker Company. The General Counsel immediately assigns the matter to a staff attorney whose workload can accommodate the assignment, then retires from Government two days later. Although the staff attorney did not retrieve the assignment from his in-box prior to the General Counsel's departure, the Baker matter was actually pending under the General Counsel's official responsibility from the time the General Counsel received the request for guidance.

*Example 6 to paragraph (j):* A staff attorney in the Federal Emergency Management Agency's Office of General Counsel is consulted by procurement officers concerning the correct resolution of a contractual matter involving Able Company. The attorney 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 General Counsel. The General Counsel had official responsibility for the determination of the Able Company matter, but the subsequent matters were never actually pending under his official responsibility.

*Example 7 to paragraph (j):* An employee of the National Endowment for the Humanities becomes "acting" Division Director of the Division of Education Programs when the Division Director is away from the office for three days to attend a conference. During those three days, the employee has authority to direct Government action in connection with many matters with which she ordinarily would have no involvement. However, in view of the brief time period and the fact that there remains an incumbent in the position of Division Director, the agency ethics official properly may determine that the acting official did not acquire official responsibility for all matters then pending in the Division.

*Example 8 to paragraph (j):* A division director at the Food and Drug Administration disqualified himself from participating in the review of a drug for Alzheimer's disease, in accordance with subpart E of 5 CFR part 2635, because his brother headed the private sector team which developed the drug. The matter was instead assigned to the division director's deputy. The director continues to have official responsibility for review of the drug. The division director also would have retained official responsibility for the matter had he either asked his supervisor or another division director to oversee the matter.

*Example 9 to paragraph (j):* The Deputy Secretary of a department terminates Government service to stay home with her newborn daughter. Four months later, she returns to the department to serve on an advisory committee as a special Government employee (SGE). After three months, she terminates Government service once again in order to accept a part-time position with a public relations firm. The 18 U.S.C. 207(a)(2) bar commences when she resigns as Deputy Secretary and continues to run for two years. (Any action taken in carrying out official duties as a member of the advisory committee would be undertaken on behalf of the United States and would, therefore, not be restricted by 18 U.S.C. 207(a)(2). See §2641.301(a).) A second two-year restriction commences when she terminates from her second period of Government service but it applies only with respect to any particular matter actually pending under her official responsibility during her three-month term as an SGE.

#### **§2641.203 One-year restriction on any former employee's representations, aid, or advice concerning ongoing trade or treaty negotiation.**

(a) *Basic prohibition of 18 U.S.C. 207(b).* For one year after his Government service terminates, no former employee shall, on the basis of "covered information," knowingly represent,

aid, or advise any other person concerning an ongoing trade or treaty negotiation in which, during his last year of Government service, he participated personally and substantially as an employee. “Covered information” refers to agency records which were accessible to the employee which he knew or should have known were designated as exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(b) does not apply to a former employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Testifying under oath. *See* § 2641.301(f).

(4) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(5) Acting as an employee at a Government-owned, contractor-operated entity pursuant to a waiver. *See* § 2641.301(i).

(c) *Commencement and length of restriction.* 18 U.S.C. 207(b) commences upon an employee’s termination from Government service. The restriction lasts for one year or until the termination of the negotiation, whichever occurs first.

(d) *Represent, aid, or advise.* [Reserved]

(e) *Any other person.* [Reserved]

(f) *On the basis of.* [Reserved]

(g) *Covered information.* [Reserved]

(h) *Ongoing trade or treaty negotiation.* [Reserved]

(i) *Participated personally and substantially.* [Reserved]

**§ 2641.204 One-year restriction on any former senior employee’s representations to former agency concerning any matter, regardless of prior involvement.**

(a) *Basic prohibition of 18 U.S.C. 207(c).* For one year after his service in a senior position terminates, no former senior employee may knowingly, with the intent to influence, make any communication to or appearance before an employee of an agency in which he served in any capacity within the one-year period prior to his termination from a senior position, if that communication or appearance is made on behalf of any other person in connection

with any matter on which the former senior employee seeks official action by any employee of such agency. An individual who served in a “very senior employee” position is subject to the broader two-year restriction set forth in 18 U.S.C. 207(d) in lieu of that set forth in section 207(c). *See* § 2641.205.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(c) does not apply to a former senior employee who is:

(1) Acting on behalf of the United States. *See* § 2641.301(a).

(2) Acting as an elected State or local government official. *See* § 2641.301(b).

(3) Acting on behalf of specified entities. *See* § 2641.301(c).

(4) Making uncompensated statements based on special knowledge. *See* § 2641.301(d).

(5) Communicating scientific or technological information pursuant to procedures or certification. *See* § 2641.301(e).

(6) Testifying under oath. *See* § 2641.301(f).

(7) Acting on behalf of a candidate or political party. *See* § 2641.301(g).

(8) Acting on behalf of an international organization pursuant to a waiver. *See* § 2641.301(h).

(9) Acting as an employee of a Government-owned, contractor-operated entity pursuant to a waiver. *See* § 2641.301(i).

(10) Subject to a waiver issued for certain positions. *See* § 2641.301(j).

(c) *Applicability to special Government employees and Intergovernmental Personnel Act appointees or detailees*—(1) *Special Government employees.* (i) 18 U.S.C. 207(c) applies to an individual as a result of service as a special Government employee (SGE) who:

(A) Served in a senior employee position while serving as an SGE; and

(B) Served 60 or more days as an SGE during the one-year period before terminating service as a senior employee.

(ii) Any day on which work is performed shall count toward the 60-day threshold without regard to the number of hours worked that day or whether the day falls on a weekend or holiday. For purposes of determining whether an SGE’s rate of basic pay is equal to or greater than 86.5 percent of the rate of basic pay for level II of the