

Post-Government Employment --18 U.S.C. § 207(c)

Elements of 18 U.S.C. § 207(c)*

<p style="text-align: center;">One-Year Ban (starts at the end of senior service)</p>
<p style="text-align: center;">Former Senior Employee Knowingly Make Appearance or Communication Intent to Influence To or Before an Employee Department or Agency Where Employee Served (in any capacity) Within One Year Before Leaving Senior Service On Behalf of Any Other Person</p>
<p style="text-align: center;">Any Matter In Which Official Action is Sought</p>

* This is only a summary. When giving advice, always consult the complete set of laws, rules, and opinions that apply to the particular situation.

Basic Prohibition

None of the provisions of 18 U.S.C. § 207 bar any individual from accepting employment with any private or public employer after Government service. Section 207 only prohibits individuals from engaging in certain activities on behalf of persons or entities other than the United States, whether or not done for compensation. None of the restrictions bar self-representation.

Section 207(c) is a one-year restriction. The one-year period is measured from the date when an employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously. The 207(c) restriction prohibits communications to or appearances before employees of any department or agency in which the senior employee formerly served in any capacity during the one-year period prior to his termination from senior service. It does not prohibit “behind-the-scenes” assistance. It applies to any matter, whether or not involving a specific party, concerning which the former senior employee is seeking official action on behalf of any other person except the United States (or the Congress). It does not require that the former employee have ever been in any way involved in the matter that is the subject of the communication or appearance.

The purpose of this one-year “cooling off” period is to allow for a period of adjustment to new roles for the former senior employee and the agency he served, and to diminish any appearance that Government decisions might be affected by the improper use by an individual of his former senior position.

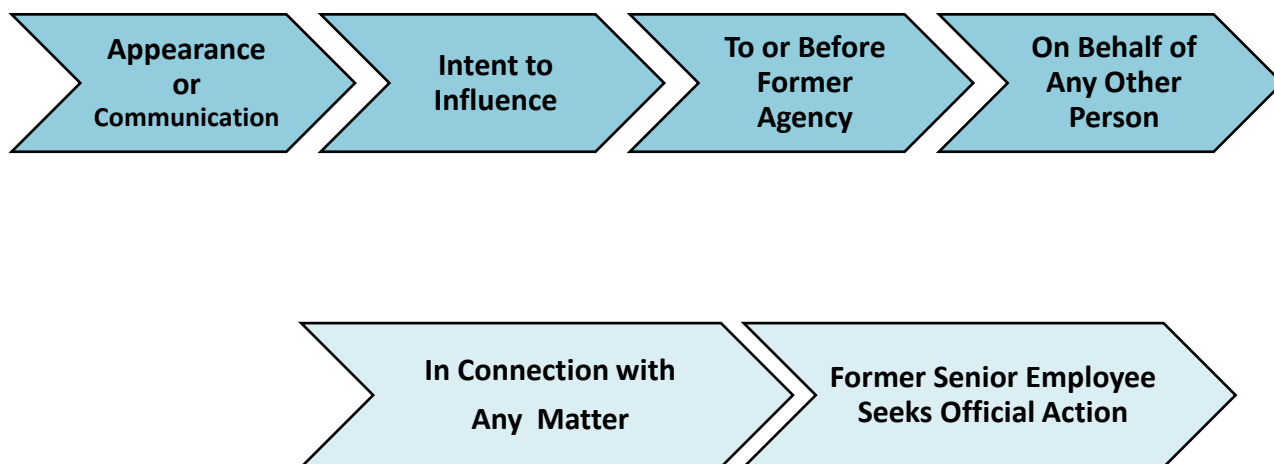
Implementing Regulation

5 CFR Part 2641 -- Post-Employment Conflict of Interest Restrictions under 18 U.S.C. § 207

5 CFR § 2641.204—One-year restriction under 18 U.S.C. § 207(c)

The Process

For one year after terminating service as a “senior employee,” the former senior employee ***may not make:***



Senior Employee

5 CFR § 2641.104

18 U.S.C. § 207(c) only applies to service as a senior employee. A senior employee is anyone, other than a very senior employee, who is:

- Any individual employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. §§ 5311-5318, except § 5312
- Any individual whose rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (most SES employees). “Rate of basic pay” does not include locality-based adjustments or additional pay such as bonuses, awards, and various allowances
- O-7 or above active duty commissioned officer (generals and admirals)
- Appointed by the President to a position under 3 U.S.C. § 105(a)(2)(B)
- Appointed by the Vice President to a position under 3 U.S.C. § 106(a)(1)(B)
- Assigned from a private sector organization to an agency under the Information Technology Exchange Program, 5 U.S.C. Chapter 37

Appearance or Communication

5 CFR § 2641.201(d)

Appearance = physical presence See 5 CFR § 2641.201(d)(2).

- Formal or informal setting
- Participating in discussions
- Simply appearing in the room (even without participation)

Communication = imparting/transmitting information (facts, opinions, ideas, questions, direction, etc.) See 5 CFR § 2641.201(d)(1).

- Formal and informal
- Intent that information be attributed to former employee See *Example 5 to (d)*
- Orally - In writing - Electronically

Behind-the-scenes activity is permitted under sections 207(a)(1) and (a)(2) (e.g., advice or assistance) so long as it is not done through a third party with attribution intended. See 5 CFR § 2641.201(d)(3).

A former employee is prohibited from “**knowingly**” making prohibited contact.

- The question of knowledge comes up *after* an appearance or communication occurs. OGE deals with prospective advice so this element is not included in the analysis.
- Only the Department of Justice can decide whether to prosecute a former employee for knowingly making a communication or appearance that violated 18 U.S.C. § 207.

Intent to Influence

5 CFR § 2641.201(e)

Intent to influence is present when a former employee seeks:

- A Government ruling, benefit, approval, or other discretionary action, OR
- To affect Government action where a real or potential dispute or controversy exists See 5 CFR § 2641.201(e)(1).

But not when purely:

- A social visit with former co-workers
- To convey or request purely factual information (no chance of controversy); e.g., status of the matter
- To request publicly available documents

All relevant circumstances must be considered for a given case. See 5 CFR 2641.201(e)(2).

Be cautious. A communication or appearance that begins without any intent to influence may become one with the intent to influence if an unforeseen dispute arises. See 5 CFR § 2641.201(e)(3).

Other specific activities that are not considered to have the intent to influence include:

- Preparing tax returns
- Signing assurances as Principal investigators for Federal research grants
- Filing certain Security and Exchange Commission forms
- Making a communication at the initiation of the Government concerning work performed/to be performed under a Government contract or grant during a routine Government site visit to non-Government premises *See 5 CFR §§ 2641.201(e)(2).*

Mere physical presence intended to influence = when a former employee makes an appearance but does not communicate in any way. Factors to consider include:

- The former employee has been given actual or apparent authority to make any decisions, commitments, or substantive arguments in the course of the appearance
- It is anticipated that others present at the meeting will make reference to the views or past or present work of the former employee
- Circumstances do not indicate that the former employee is present merely for informational purposes; e.g., merely to listen and record information for later use
- The former employee has entered a formal appearance in connection with a legal proceeding at which he is present
- The appearance is before former subordinates or others in the same chain of command as the former employee.

See 5 CFR § 2641.201(e)(4).

To or Before an Employee of Former Agency

5 CFR §2641.204(g)

For purposes of this part, **employee** means:

- Any current Federal employee of the former agency
- An individual detailed to the former agency from another department, agency or entity, including those within the legislative and judicial branches
- An individual serving with the former agency as a collateral duty pursuant to statute or Executive order
- (With respect to communication bans involving the Executive Office of the President,) the President and Vice President.

The term **agency** is defined in 5 CFR §2641.104 and means:

- Any department, independent establishment, commission, administration, authority, board or bureau of the U.S. or Government corporation
- It includes any independent agency but not those in the legislative or judicial branches.

A former senior employee's **former agency** will ordinarily be considered the whole of any larger agency of which his former agency was a part, unless it is eligible to benefit from the designation of distinct and separate agency components as described in 5 CFR §2641.302.

Some public commentary is okay, when *specific conditions* are met: *See 5 CFR §2641.204(g)*.

- Appearances or communications at public gatherings or conferences, seminars, etc.
- Broadcasts or publications of commentaries

Served in Any Capacity

5 CFR § 2641.204(g)(2)(ii).

18 USC section 207(c) applies with respect to any agency in which the former senior employee served in any capacity during the one-year period prior to termination of senior service regardless of his position, rate of basic pay, or pay grade at that agency.

On Behalf of Any Other Person

5 CFR § 2641.104; 5 CFR § 2641.201(g)

Any other person includes:

- Individual, corporation, company, association, firm, or partnership (commercial or non-profit)
- Any other organization, institution, or entity (commercial or non-profit)
- All Federal, state, local, and foreign governments

The term person also includes any officer, employee, or agent of any of the above. It does not include the former employee himself or a sole proprietorship owned by a former employee (so long as the former employee represents his own interests, not a third party's interests).

Considered on behalf of a third party when a former employee acts: *See 5 CFR § 2641.201(g)(1)*.

- As agent or attorney, or
- With expressed or implied consent, and
- Subject to some degree of control or direction

Not considered on behalf of a third party merely because:

- In interest or support of another
- Because it results in a benefit to another

Matter

5 CFR § 2641.204(i)

The prohibition on seeking official action applies to any matter, including:

- Any “particular matter involving a specific party or parties” as defined in 5 CFR § 2641.201(h);
- The consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons;
- A new matter that was not previously pending at or of interest to the former senior employee’s former agency;
- A matter pending at any other agency in the executive branch, an independent agency, the legislative branch, or the judicial branch.

For further elaboration, see OGE Advisory Memo 06 x 9 of October 4, 2006 titled, *"Particular Matter Involving Specific Parties," "Particular Matter," and "Matter."*

Seeks Official Action

5 CFR § 2641.204(h)

A former senior employee seeks official action when the circumstances establish that he is making his communication or appearance for purpose of inducing a current employee, as defined in 5 CFR § 2641.204(g), to make a decision or to otherwise act in his official capacity.

Exceptions and Waivers

5 CFR § 2641.301

If you conclude that the employee's proposed activities are prohibited by § 207, you need to determine whether an exception or waiver applies. An exception or waiver would permit the employee to undertake the activities notwithstanding the statutory restrictions. Not all exceptions apply to each § 207 prohibition.

Exception/Waiver	(a)(1)	(a)(2)	(c)
Acting for the U.S. § 2641.301(a)	X	X	X
Acting for a State or Local Government as an Elected Official § 2641.301(b)	X	X	X
Acting for State or Local Gov't, Universities, Hospitals/Research Orgs. § 2641.301(c)			X
Special Knowledge § 2641.301(d)			X
Scientific or Technological Information § 2641.301(e)	X	X	X
Testimony § 2641.301(f)	X	X	X
Political Parties and Campaign Committees § 2641.301(g)			X
Acting for International Organizations § 2641.301(h)	X	X	X
OGE Waiver for 207(c) and (f) § 2641.301(j)			X