

**OFFICE OF GOVERNMENT ETHICS****5 CFR Parts 2637 and 2641**

RIN 3209-AA14

**Post-Employment Conflict of Interest Restrictions****AGENCY:** Office of Government Ethics (OGE).**ACTION:** Proposed rule.

**SUMMARY:** Since 1980, 5 CFR part 2637 (formerly 5 CFR part 737) has provided guidance concerning the post-employment conflict of interest restrictions of 18 U.S.C. 207. As a result of amendments to section 207 that became effective January 1, 1991, employees terminating service in the executive branch or in an independent agency (or terminating service from certain high-level Government positions) since that date are subject to substantially revised post-employment restrictions. The purpose of part 2641 is to provide regulatory guidance explaining the scope and content of the statutory restrictions as they apply to employees terminating service on or after January 1, 1991. This proposed rule would expand the guidance previously published in part 2641 as interim or interim final rules and make minor modifications to those earlier rulemakings. It would also remove part 2637 from 5 CFR.

**DATES:** Comments are invited and must be received on or before May 19, 2003.

**ADDRESSES:** Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Richard M. Thomas. Comments may also be sent electronically to OGE's Internet E-mail address at <http://www.usoge.gov>. The subject line of E-mail messages should include the following reference: "Comments on proposed post-employment conflict of interest rule."

**FOR FURTHER INFORMATION CONTACT:** Richard M. Thomas, Associate General Counsel, Office of Government Ethics; Telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

**SUPPLEMENTARY INFORMATION:****A. Substantive Discussion of Post-Employment Regulatory Guidance****I. Rulemaking History**

Since its enactment in 1962, 18 U.S.C. 207 has remained the primary source of post-employment restrictions applicable to former officers and employees of the executive branch and of independent agencies. In 1979 (interim rule) and 1980 (final rule), the Office of

Government Ethics (OGE) published regulatory guidance concerning section 207 as codified at 5 CFR part 737 (now 5 CFR part 2637). See OGE's regulations issued at 44 FR 19974-19988 (April 3, 1979), 45 FR 7402-7431 (February 1, 1980), 54 FR 50229-50231 (December 5, 1989), and 56 FR 3961-3965 (February 1, 1991), as amended, redesignated and corrected over the years.

Section 207 was substantially revised by the Ethics Reform Act of 1989, Pub. L. 101-194, 103 Stat. 1716, with technical amendments enacted by Pub. L. 101-280, 104 Stat. 149 (1990). As a result of these and subsequent amendments, employees terminating Government service (or service in certain high-level Government positions) on or after January 1, 1991, are subject to revised substantive prohibitions.

Pursuant to authority set forth in the Ethics in Government Act of 1978, as amended, and Executive Order 12674, as modified by Executive Order 12731 (hereinafter referred to as Executive Order 12674), OGE published executive branch guidance concerning certain aspects of the new version of 18 U.S.C. 207 on February 1, 1991 (56 FR 3961-3965), now codified at 5 CFR part 2641.<sup>1</sup> For purposes of section 207(c), the 1991 interim rule (1) Established procedures for exempting senior employee positions; (2) designated separate departmental and agency components; and (3) established procedures for future designations and modification of designations of departmental or agency components. The appendices to part 2641 reserved for listings of exemptions and designations were subsequently amended by final rules published at 57 FR 3115-3117 (January 28, 1992), 57 FR 11673 (April 7, 1992), 58 FR 33755-33756 (June 21, 1993), 62 FR 26915-26918 (May 16, 1997), 64 FR 5709-5710 (February 5, 1999), and, most recently, 68 FR 4681-4684 (January 30, 2003).

As described below in the discussions of §§ 2641.204, 2641.301(j) and 2641.302 as proposed, this proposed rule would make further minor modifications to existing part 2641. In addition, it would expand part 2641 to provide comprehensive guidance concerning 18 U.S.C. 207 as applicable to individuals terminating service on or after January 1, 1991 (or service in certain high-level Government

positions), incorporating amendments to section 207 enacted subsequent to the Ethics Reform Act.<sup>2</sup> As discussed more fully below, a future rulemaking would supplement the preliminary guidance at proposed §§ 2641.203 and 2641.206 concerning 18 U.S.C. 207(b) and (f).

This proposed rule does not address very limited amendments enacted on December 17, 2002, in section 209(d) of the E-Government Act of 2002, Pub. L. 107-347. These amendments, which pertain only to assignees from private sector organizations under the newly authorized Information Technology Exchange Program, had not been enacted when the proposed rule was developed and will not be effective until April 16, 2003, subsequent to the issuance of the proposed rule. See section 402(a)(1), Pub. L. 107-347. OGE invites comments concerning interpretation of these amendments—which add a new category of senior employee under section 207(c)(2)(A)(v) and a new restriction on contract advice in section 207(l)—which will be addressed in the final rule, as appropriate.

OGE is proposing to discontinue publication of 5 CFR part 2637. Due to the passage of time, employees who terminated service prior to January 1, 1991, could no longer be subject to any of the substantive restrictions of the previous version of 18 U.S.C. 207 other than the permanent bar for particular matters involving specific parties. Former employees, agency ethics officials and other interested parties can continue to consult the last edition of

<sup>2</sup> The statute has been amended several times since the Ethics Reform Act. Section 101(b)(8)(A) of Pub. L. 101-509, 104 Stat. 1389, amended 18 U.S.C. 207(c)(2)(A)(ii) to change the pay-based threshold for purposes of determining the applicability of section 207(c) from the rate for GS-17 to the rate for level V of the Executive Schedule. Section 705(a) of Pub. L. 102-25, 105 Stat. 75 reinstated section 207(k) authorizing Presidential waivers of section 207 in narrow circumstances, a provision that was later amended by Pub. L. 102-190. Section 609 of Pub. L. 102-395, 106 Stat. 1828, amended section 207(f) to extend that one-year restriction to three years in the case of any individual assuming the office of U.S. Trade Representative after October 6, 1992, the effective date of the law. Subsequently, section 21(a) of Pub. L. 104-65, 109 Stat. 691, amended section 207(f)(2) to permanently bar both the U.S. Trade Representative and the Deputy U.S. Trade Representative from engaging in the activities prohibited by section 207(f). Sections 5 and 6 of Pub. L. 104-179, 110 Stat. 1566, changed the rate of basic pay triggering "senior employee" status and added a new exception permitting former high-level officials to represent certain candidates and political organizations notwithstanding section 207(c) or (d). Finally, section 102(a) of Pub. L. 105-244, 112 Stat. 1585, made a conforming change to the exception at section 207(j)(2)(B) when it amended the definition of "institution of higher learning" in title 20 of the United States Code. (Pub. L. 103-322, 108 Stat. 1796 made only two very minor grammatical changes to section 207(c).)

<sup>1</sup> OGE also issued, by Memoranda to Designated Agency Ethics Officials, General Counsels and Inspectors General, summaries of the restrictions of 18 U.S.C. 207, as amended, on October 26, 1990, November 5, 1992, and February 17, 2000. The current version of the summary may be found on OGE's Web site at <http://www.usoge.gov> under "DAEOgrams" for the year 2000.