

the CFR in which part 2637 was published, for interpretive guidance concerning the permanent bar and relevant exceptions as applicable to employees who terminated service before January 1, 1991. OGE will maintain a copy of part 2637 and suggests that all designated agency ethics officials keep a copy in their files.

As required by section 201(c) of Executive Order 12674, OGE is publishing this proposed rule after obtaining the concurrence of the Department of Justice. We also consulted with the Office of Personnel Management pursuant to title IV of the Ethics in Government Act of 1978, as amended. Section 402 of that Act provides, among other things, that the Director of OGE shall provide, in consultation with the Office of Personnel Management (OPM), overall direction of executive branch policies relating to preventing conflicts of interest, and develop, in consultation with the Justice Department and OPM, rules and regulations pertaining to the identification and resolution of conflicts of interest.

Subpart A—General Provisions

Proposed § 2641.101—Purpose

Proposed § 2641.101(a) explains that 18 U.S.C. 207 does not bar employment with any particular employer. Rather, it prohibits certain acts which involve, or may appear to involve, the unfair use of prior Government employment. The section would stress that the proscribed activities are prohibited even if they are undertaken for no compensation. The section would also note that the restrictions are personal to the employee and that they are not imputed to others, such as a law partner of a former employee. On the other hand, we have inserted a parenthetical cross-reference to the note following proposed § 2641.103 concerning the punishment under 18 U.S.C. 2 of a person or entity who “aids, abets, counsels, commands, induces, or procures commission” of a violation of 18 U.S.C. 207.

Proposed § 2641.101(b) makes two important points. First, it would emphasize that part 2641 provides interpretive guidance concerning the application of 18 U.S.C. 207 to former employees of the executive branch or of certain independent agencies of the Federal Government of the United States, including current employees who formerly served in “senior” or “very senior” employee positions. Second, although certain of the statute’s provisions also apply to former employees of the District of Columbia, Members and elected officials of

Congress and legislative staff, and employees of independent agencies in the legislative and judicial branches, the proposed paragraph specifically states that part 2641 is not intended to provide guidance to those individuals.

The note following proposed § 2641.101(b) warns that part 2641 does not purport to interpret post-employment restrictions that may be contained in laws or authorities other than section 207. Thus, for example, a former employee must comply with 18 U.S.C. 203 which restricts the acceptance of compensation in connection with certain representational activities undertaken by the employee or others at a time when the former employee was still serving with the Government. Under 41 U.S.C. 423(d), a former agency official may not accept compensation from a contractor for one year as an employee, officer, director, or consultant if the former official: (1) Served in certain procurement positions at the time the contractor was selected for or awarded a contract in excess of \$10,000,000; (2) served in certain positions relating to the administration of a contract with the contractor in excess of \$10,000,000; or (3) personally made certain decisions valued in excess of \$10,000,000 in relation to a contract with the contractor. *See* 48 CFR part 3. The proposed note does not refer to restrictions contained in any professional codes of conduct, as these are outside the jurisdiction of OGE.

The proposed note does not purport to set forth an exhaustive list of all post-employment restrictions, including agency-specific or position-specific restrictions. We were concerned that the burden associated with compiling and maintaining an exhaustive (and accurate) list would outweigh the benefit of such a listing in a regulation intended to provide guidance relating to 18 U.S.C. 207. If history is any indicator, post-employment restrictions are frequently amended, suspended or abolished, then amended again or reinstated (*see, e.g.,* the legislative history of 41 U.S.C. 423(d)). We also foresaw difficulties in defining the standards for inclusion in such a listing.

Proposed § 2641.102—Applicability

Section 207 has been amended several times over the years. Proposed § 2641.102 traces the most significant of these amendments and explains that, as a consequence of these changes, former employees are subject to varying post-employment restrictions depending upon the date of their termination from Government service (or from a “senior” or “very senior” employee position). Section 2641.102 as proposed indicates

whether an employee should consult 5 CFR part 2637 or part 2641 for regulatory guidance.

A note following § 2641.102 as proposed would warn that the guidance in part 2641 incorporates all amendments to 18 U.S.C. 207 enacted after the Ethics Reform Act of 1989 (and the related technical amendments to that Act), except as superseded. Significantly, as would be explained in the note, an individual who terminated Government service (or a “senior” or “very senior” employee position) before one or more of these amendments became effective would have become subject to a version of section 207 other than that reflected in part 2641 as proposed.

The substantive post-Ethics Reform Act amendments have concerned the applicability of sections 207(c), (d), or (f), the waiver authority in section 207(k), and the definition of “institution of higher learning” in section 207(j)(2)(B). The one-year restriction of section 207(c) has expired as to any former senior employee covered by a version of that restriction other than that described in part 2641. Moreover, the prior versions of section 207(f) are of relevance only in relation to the length of the restriction as it applied to a former United States Trade Representative or former Deputy United States Trade Representative who terminated service in the early 1990s. And, since the waiver authority in section 207(k) has not yet been utilized, a section 207(k) waiver would, in the future, be granted in accordance with part 2641, once it is finally adopted.

As discussed earlier, OGE is proposing to discontinue publication of 5 CFR part 2637. Since proposed § 2641.102(b) indicates that part 2637 should be consulted in relation to employees who terminated service prior to 1991, that section would also note the edition of the CFR in which part 2637 was last published.

Proposed § 2641.103—Enforcement and Penalties

It is the role of ethics officials, both at OGE and elsewhere, to give advice concerning the meaning of 18 U.S.C. 207. Section 2641.103(a) of the proposed rule notes that agencies are required by 28 U.S.C. 535 to report to the Attorney General any information, allegations, or complaints of possible violations of the laws in title 18 of the United States Code involving Government officers and employees, including violations of 18 U.S.C. 207 by former officers and employees.

When a matter involving a Federal conflict of interest law is referred to the