

that the District of Columbia must have been listed separately in section 207(j)(1) for purposes of indicating the exception's applicability to former District of Columbia employees who act on behalf of that government.

As defined in proposed § 2641.104, "Government service" means "a period of time during which an individual is employed by the Federal Government." The proposed definition provides some guidance concerning when service ends in the case of "special Government employees," including some advisory committee members and Reserve officers of the Armed Forces and officers of the National Guard of the United States. As defined in 18 U.S.C. 202(a), a special Government employee (SGE) is an officer or employee of the executive branch or any independent agency "who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis * * *." Many of these individuals serve the Government only a few days per year, often returning to private sector employment during interim periods.

In the case of civilians who serve the executive branch or independent agencies as SGEs, the definition of "Government service" proposed in § 2641.104 indicates that Government service refers to "the period of time covered by the individual's appointment (or other act evidencing employment with the Government), regardless of any interval or intervals between days actually served." Thus, sections 207(a)(1), (a)(2), and (b) are not triggered each time there is an interval between the days on which a civilian SGE actually performs work. Example 4 following the definition of "former employee" in proposed § 2641.104 is illustrative.

In the case of a Reserve or National Guard officer, status as an SGE is related to the performance of active duty or active duty for training. More specifically, unless otherwise an employee, a Reserve or National Guard officer is classified as an SGE only while on active duty involuntarily, while on active duty for training for any length of time, or while serving voluntarily on extended active duty for 130 days or less. See 18 U.S.C. 202(a). The definition of "Government service" in proposed § 2641.104 indicates that, in the case of Reserve or National Guard officers, the end of a period of active duty or active duty for training as an SGE is considered the end of

Government service for purposes of triggering the application of sections 207(a)(1), (a)(2), and (b). See example 5 following the proposed definition of "former employee" in § 2641.104. During periods when not serving on active duty, officers maintain their Reserve or National Guard status—categorized as either "active" or "inactive"—but they are not considered SGEs. Like civilians, Reserve and National Guard officers are, while special Government employees, subject to 18 U.S.C. 203 and 205. Similar to section 207, these statutes restrict an individual's ability to represent others before Federal departments, agencies, or courts.

The definition of the term "executive branch" derives from 18 U.S.C. 202(e)(1). According to 18 U.S.C. 202(e)(1), the executive branch includes "each executive agency as defined in title 5, and any other entity or administrative unit in the executive branch." The term "executive agency" is defined in 5 U.S.C. 105 to mean "an Executive department, a Government corporation, and an independent establishment." The "Executive departments" are enumerated in 5 U.S.C. 101. Accordingly, proposed § 2641.104 states that the term "executive branch" includes "an Executive department as defined in 5 U.S.C. 101, a Government corporation, and an independent establishment (other than the General Accounting Office) * * * and also includes any other entity or administrative unit in the executive branch." The definitions of the "judicial" and "legislative" branches are from corresponding definitions in 18 U.S.C. 202(e)(2) and (3). Following 18 U.S.C. 202(e)(3)(B), we include the General Accounting Office (GAO) in our proposed definition of "legislative branch" and specifically exclude GAO from our proposed definition of "executive branch."

We determined that it would be appropriate to define the term "Government corporation" by reference to two separate statutory provisions, one in title 5 and one in title 18 of the United States Code. For purposes of determining the employees subject to 18 U.S.C. 207, we propose to use the definition of "Government corporation" in 5 U.S.C. 103. As defined in that section for purposes of Government personnel rules, a Government corporation means a corporation owned or controlled by the Government of the United States. In contrast, we propose to rely on the definition in 18 U.S.C. 6 when necessary to identify the employees with whom post-employment contact is restricted, to

describe matters to which the United States is a party or has a direct and substantial interest, to specify the decisions of whom a former senior or very senior employee cannot seek to influence on behalf of a foreign entity, and to explain when an activity will be deemed undertaken on behalf of the United States. A corporation is an "agency" as defined in 18 U.S.C. 6 if it is a corporation "in which the United States has a proprietary interest." The Department of Justice's Office of Legal Counsel has distinguished a proprietary interest from one that is merely "custodial or incidental" as determined by reference to the corporation's "functions, financing, control, and management." 12 Op. Off. Legal Counsel 84 (1988). The proposed definition incorporates this Office of Legal Counsel guidance.

As defined in proposed § 2641.104, an individual becomes a "former employee" at the termination of Government service. Examples following the proposed definition of former employee illustrate the combined effect of this definition and those of "employee," "executive branch," and "Government service." Notably, proposed example 3 emphasizes that former employee status is triggered when an employee terminates *Federal* service. Thus, the example points out that an individual who served in a GS-14 position did not become a former employee when he terminated service in the executive branch to accept a position in the legislative branch. This result is dictated by language in 18 U.S.C. 207(a)(1), (a)(2) and (b) indicating that those restrictions commence when "service or employment with the United States" terminates. In contrast, we indicate that status as a "former senior employee" or "very senior employee" is triggered (for purposes of sections 207(c), (d), and (f)) at the termination of service in a senior or very senior position. This distinction appears both in the proposed definition of "former employee" and in proposed definitions of "former senior employee" and "former very senior employee."

The proposed revised definition of "senior employee" at § 2641.104 reflects the post-Ethics Reform Act of 1989 amendment of 18 U.S.C. 207(c) by the Office of Government Ethics Authorization Act of 1996, Pub. L. 104-179. Prior to the amendment of section 207(c)(2)(A)(ii) by that Act, section 207(c) applied, *inter alia*, to employees occupying positions for which the rate of basic pay was equal to or greater than that payable for level V of the Executive Schedule (EL-V). The amendment replaced the EL-V threshold with the