

party with the intent to influence a decision of an employee of a Federal department or agency. Like sections 207(c) and 207(d), the restriction is measured from the date when an employee ceases to be a senior or very senior employee and not necessarily from his termination from Government service. Like section 207(b), section 207(f) differs from the other section 207 restrictions in that it prohibits certain “behind-the-scenes” aid or advice in addition to prohibiting certain contacts with Government officials.

We have reserved § 2641.206(d)–(g) to indicate that OGE will revise § 2641.206 in the future additional guidance concerning section 207(f). For now, proposed § 2641.206 includes only a summary of the restriction and paragraphs concerning the restriction’s applicability, commencement, and duration. Proposed § 2641.206(c) indicates that section 207(f) is a one-year restriction except as applied to a former U.S. Trade Representative or former Deputy U.S. Trade Representative. Originally a one-year restriction as applied to individuals terminating from these positions, section 609 of Pub. L. 102–395, 106 Stat. 691, amended section 207(f) to extend the one-year restriction to three years in the case of any individual becoming the U.S. Trade Representative after the 1992 effective date of that law. Subsequently, section 21(a) of Pub. L. 104–65, 109 Stat. 691, amended section 207(f)(2) to permanently bar either a former U.S. Trade Representative or former Deputy U.S. Trade Representative from engaging in the activities prohibited by section 207(f).

Subpart C—Exceptions, Waivers and Separate Components

Proposed § 2641.301(a)–(j) address the parenthetical “except the United States” provision contained in 18 U.S.C. 207(a)(1), (a)(2), (b), (c), and (d); the general exceptions and waivers described in section 207(j); the waiver authority in section 207(k); and section 207(c)(2)(C)’s provision for the exclusion of certain positions from the coverage of sections 207(c) and (f). Proposed § 2641.302 concerns the designation of separate and departmental components to narrow the scope of the section 207(c) bar.

Proposed § 2641.301(a)—Acting on Behalf of the United States

As indicated by the parenthetical “except the United States” which appears in each of the substantive restrictions of 18 U.S.C. 207 except section 207(f), otherwise prohibited activity is permissible if engaged in on

behalf of the United States. In addition to this parenthetical, however, section 207(j)(1) of the current version of the statute provides that “[t]he restrictions contained in this section shall not apply to acts done in carrying out official duties on behalf of the United States * * *.” Proposed § 2641.301(a) implements the parenthetical language and section 207(j)(1).

The definition of “United States” at proposed § 2641.301(a)(1) encompasses the entire Federal Government. The District of Columbia is not part of the United States for purposes of the exception. While former employees of the government of the District of Columbia are covered by 18 U.S.C. 207(a)(1) and (a)(2), section 207(a)(3) makes it clear that the United States and the District of Columbia are separate entities for purposes of those restrictions. Thus, former employees of the United States may represent others before employees of the government of the District of Columbia and vice versa. Similarly, while section 207(j)(1) states that the restrictions of section 207 “shall not apply to acts done in carrying out official duties on behalf of the United States *or the District of Columbia* * * *” (emphasis added), we have interpreted this language merely to indicate that former employees of the District of Columbia may represent the government of the District of Columbia notwithstanding section 207(a)(1) or (a)(2). As we indicated earlier in connection with proposed § 2641.104, however, we have defined the District of Columbia as a State for purposes of the section 207(j) exceptions implemented in § 2641.301(b) and (c).

Proposed § 2641.301(a)(2) addresses the often repeated argument that an activity is undertaken on behalf of the United States if it benefits the United States. We have consistently rejected this expansive reading of the exception. *See, e.g.,* OGE Memorandum to Designated Agency Ethics Officials, General Counsels, and Inspectors General (February 17, 2000), available under “DAEOgrams” on OGE’s Web site, <http://www.usoge.gov>. As proposed, the regulation indicates that the exception does not apply merely because a former employee “is performing work funded by the Government, because he is engaging in the activity in response to a contact initiated by the Government, because the Government will derive some benefit from the activity, or because he or the person on whose behalf he is acting may share the same objective as the Government.” Proposed examples 1, 2, and 3 are illustrative. To the extent that OGE Informal Advisory Letter 81 x

9 can be read as indicating that responses to Government-initiated exchanges are always permissible regardless of the circumstances, we expressly reject that reading here.

Proposed § 2641.301(a)(2)(i) states that activities are undertaken on behalf of the United States when undertaken in carrying out official duties as a current employee of the United States. Thus, as illustrated in examples 1 and 2 following proposed § 2641.301(a), a person who is reemployed by the United States may perform his official Government duties unfettered by the post-employment restrictions in 18 U.S.C. 207. Notably, proposed example 2 indicates that a former employee may carry out official duties as an employee of the legislative branch without violating the section 207 restrictions when she undertakes an activity for a constituent. Departing from guidance in OGE Informal Advisory Letter 81 x 4, we are not proposing to distinguish service performed for a Congressman’s constituent from actions taken in furtherance of a Congressman’s “legislative function.”

The note following the proposed § 2641.301(a) examples cross-references two additional examples, found elsewhere in the regulation, which also concern the operation of this exception in the case of current employees. The second of these, example 1 following proposed § 2641.204(d), shows how the exception applies in the case of a current employee who, although having never left Government service, is a former employee by virtue of having terminated a senior employee position. But for the exception, the former senior employee might have been hindered in the performance of his official duties by 18 U.S.C. 207(c).

As described in proposed § 2641.301(a), the exception for acts undertaken on behalf of the United States is not limited to acts carried out as an *employee* of the United States. This subject was addressed in OGE Informal Advisory Letter 82 x 16, which dealt with a former employee whose law firm was hired by his former agency to represent it in a case in which the employee had been personally and substantially involved while in Government. After advising that the former employee could not negotiate the terms of the legal services contract on behalf of his firm, OGE concluded that the former employee could perform the contract by representing the agency in court, because such representations would be on behalf of the United States. OGE also stated that the former employee could “contact [the agency] for the files, discuss briefs previously