

matters to receive compensation for testimony because of their personal knowledge of the facts.

Proposed § 2641.301(f)(3) implements section 207(j)(6) as it pertains to the permissibility of statements made under penalty of perjury. Proposed § 2641.301(f)(3) emphasizes that this exception does not authorize an employee to “submit a pleading, application, or other document as an attorney or other representative.” See also 5 CFR 2637.208(c). We also emphasize in § 2641.301(f)(3) as proposed that when the permanent bar is applicable, a former employee is subject to the limitation concerning expert witness testimony even though his testimony could also be characterized as a statement made under penalty of perjury.

The proposed note following § 2641.301(f)(3) as proposed would emphasize that, for purposes of the exception, it is irrelevant that a witness may be compensated for his testimony. On the other hand, the note alerts former employees and others to the criminal provisions in 18 U.S.C. 201(c)(3) and (d) which may prohibit fact witnesses from receiving compensation for testifying in certain forums other than as “provided by law” or to cover “the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance” at a proceeding. Separately, the note also alerts the reader to the possible existence of agency procedures relating to the production or disclosure of Government information by current or former employees. See, e.g., Department of Justice regulations at 28 CFR part 16, subpart B.

*Proposed § 2641.301(g)—Acting on Behalf of a Candidate or Political Party*

The Office of Government Ethics Authorization Act of 1996, Pub. L. 104–179, 110 Stat. 1566, amended 18 U.S.C. 207(j) to add a new exception to sections 207(c) and (d). Under new section 207(j)(7), a former senior or very senior employee may represent a “candidate” for Federal or State office or “an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party.” The proposed regulatory definitions of these terms at § 2641.301(g)(1) closely track the statutory definitions in section 207(j)(7). As noted earlier in connection with proposed § 2641.301(b) and (c), the term “State” is defined in § 2641.104 as proposed.

Proposed § 2641.301(g)(2)(ii) reflects that a communication or appearance must be made on behalf of “one or

more” of the candidates or political organizations specified in § 2641.301(g)(1) (i)–(vi). This language reflects our interpretation that the exception is available to a former senior or very senior employee who is simultaneously acting on behalf of more than one of the specified candidates or political organizations.

If the former senior or very senior employee is representing a candidate, section 207(j)(7) applies only if the employee makes the communication or appearance on behalf of the candidate “in his or her capacity as a candidate.” Accordingly, the former Attorney General in proposed examples 2 and 3 following proposed § 2641.301(g) could seek official action from a Government official about a tax matter of interest to a State committee, but could not make a communication on behalf of a candidate seeking the dismissal of an enforcement action involving the candidate’s family business.

The exception is available to a former senior or very senior employee who is retained either directly by a candidate or specified political organization or who is hired by a third person who provides services exclusively to candidates or the specified political organizations. Significantly, the exception is not available if the former employee is “employed by” any other person or entity at the time he makes the communication or appearance. This limitation, described at proposed § 2641.301(g)(2)(i), is illustrated in example 4. The former senior employee in that example cannot avoid the section 207(c) bar by using the exception because he is employed by a firm that does not exclusively “represent, aid, or advise” the specified persons or entities.

Section 207(j)(7) applies only when the communication or appearance is made “solely on behalf of” a specified candidate or political organization. We would highlight this restriction by denoting it as one of the “limitations” at § 2641.301(g)(2) as proposed.

Finally, proposed § 2641.301(g) recognizes that even a communication or appearance purportedly made solely on behalf of a specified person or entity may unavoidably also involve a representation of the former senior or very senior employee’s employer. Since the exception contemplates that former employees may become “employed by” third persons or entities who provide services exclusively to candidates or political organizations, we did not believe that such an affiliation should preclude use of the exception.

Accordingly, we indicate that a former employee may make a communication or appearance on behalf of such a third

person or entity, described in proposed § 2641.301(g)(2)(i)(B), provided the communication or appearance otherwise meets the requirements for the § 2641.301(g) exception as proposed.

*Proposed § 2641.301(h)—Acting on Behalf of an International Organization Pursuant to a Waiver*

Section 207(j)(3) was added by the Ethics Reform Act of 1989 version of section 207. This exception provides that the restrictions of the statute shall not apply to “an appearance or communication on behalf of, or aid or advice to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States.” The Secretary of State has issued several section 207(j)(3) waivers.

Proposed § 2641.301(h) provides that a section 207(j)(3) waiver may be granted to any “former employee.” We believe that the Secretary of State may entertain a request for a waiver from a current employee who has firm post-employment plans, provided that the effective date of the waiver occurs after the employee becomes a former employee.

*Section 2641.301(i)—Acting as an Employee of a Government-Owned, Contractor Operated Entity Pursuant to a Waiver*

Section 207(k) of 18 U.S.C. authorizes the President to waive some or all of the substantive restrictions of section 207 for up to 25 current employees of the executive branch (excluding any former employees who may be continuing to benefit from previously issued waivers). Subject to a slightly more flexible provision relating to prior employment at certain laboratories, a waiver under this section applies to an individual who returns to the same Government-owned, contractor operated entity by which he was employed just prior to entering Government service. Proposed § 2641.301(i) re-states the statutory criteria and procedures applicable to such waivers.

*Proposed § 2641.301(j)—Waiver for Certain Positions From the Prohibitions of 18 U.S.C. 207 (c) and (f)*

Apart from the general exceptions and waivers described in section 207(j) and the waiver authority set forth in section 207(k), section 207(c) is not applicable to any former senior employee whose Government position has been waived from the prohibition by the Director of OGE. See section 207(c)(2)(C).

On February 1, 1991 OGE published an interim rule (with request for