

employers or other persons, whether or not done for compensation. These restrictions are personal to the employee and are not imputed to others. (*See*, however, the note following § 2641.103 concerning 18 U.S.C. 2.)

(b) *Purpose of part 2641.* This part 2641 provides interpretive guidance explaining the scope and content of 18 U.S.C. 207 as it applies to former employees of the executive branch or of certain independent agencies (including current employees who formerly served in “senior” or “very senior” employee positions). Although certain restrictions in section 207 apply to former employees of the District of Columbia, Members and elected officials of the Congress and certain legislative staff, and employees of independent agencies in the legislative and judicial branches, this part is not intended to provide guidance to those individuals.

**Note to § 2641.101:** Part 2641 does not address post-employment restrictions that may be contained in laws or authorities other than 18 U.S.C. 207. These restrictions include those in 18 U.S.C. 203 and 41 U.S.C. 423(d).

#### § 2641.102 Applicability.

Since its enactment in 1962, 18 U.S.C. 207 has been amended several times. As a consequence of these amendments, former executive branch employees are subject to varying post-employment restrictions depending upon the date they terminated Government service (or service in a “senior” or “very senior” employee position).

(a) *Employees terminating on or after January 1, 1991.* Former employees who terminated or employees terminating Government service (or service in a “senior” or “very senior” employee position) on or after January 1, 1991, are subject to the provisions of 18 U.S.C. 207 as amended by the Ethics Reform Act of 1989, title I, Public Law 101–194, 103 Stat. 1716 (with amendments enacted by Act of May 4, 1990, Public Law 101–280, 104 Stat. 149) and by subsequent amendments. This part 2641 provides guidance concerning section 207 to these former employees.

(b) *Employees terminating between July 1, 1979 and December 31, 1990.* Former employees who terminated service between July 1, 1979, and December 31, 1990, are subject to the provisions of section 207 as amended by the Ethics in Government Act of 1978, title V, Public Law 95–521, 92 Stat. 1864 (with amendments enacted by Act of June 22, 1979, Public Law No. 96–28, 93 Stat. 76). Regulations providing guidance concerning 18 U.S.C. 207 to these employees were last published in the 2003 edition of Title 5 of the Code

of Federal Regulations, revised as of January 1, 2003.

(c) *Employees terminating prior to July 1, 1979.* Former employees who terminated service prior to July 1, 1979, are subject to the provisions of 18 U.S.C. 207 as enacted in 1962 by the Act of October 23, 1962, Public Law 87–849, 76 Stat. 1123.

**Note to § 2641.102:** The provisions of this part 2641 reflect amendments to 18 U.S.C. 207 enacted subsequent to the Ethics Reform Act of 1989 and before [the effective date of the final rule]. An employee who terminated Government service (or service in a “senior” or “very senior” employee position) between January 1, 1991, and [the effective date of the final rule] may have become subject, upon termination, to a version of the statute that existed prior to the effective date of one or more of those amendments. Those amendments concerned: (1) Changes, effective in 1990 and 1996, concerning the rate of basic pay triggering “senior employee” status for purposes of section 207(c); (2) the reinstatement and subsequent amendment of the Presidential waiver authority in section 207(k); (3) the length of the restriction set forth in section 207(f) as applied to a former United States Trade Representative or Deputy United States Trade Representative; (4) the addition of section 207(j)(7), an exception to section 207(c) and (d); and (5) a change to section 207(j)(2)(B), an exception to section 207(c) and (d).

#### § 2641.103 Enforcement and penalties.

(a) *Enforcement.* Criminal and civil enforcement of the provisions of 18 U.S.C. 207 is the responsibility of the Department of Justice. An agency is required to report to the Attorney General any information, complaints or allegations of possible criminal conduct in violation of title 18 of the United States Code, including possible violations of section 207 by former officers and employees. *See* 28 U.S.C. 535. When a possible violation of section 207 is referred to the Attorney General, the referring agency shall concurrently notify the Director of the Office of Government Ethics of the referral in accordance with 5 CFR 2638.603.

(b) *Penalties and injunctions.* 18 U.S.C. 216 provides for the imposition of one or more of the following penalties and injunctions for a violation of section 207:

(1) *Criminal penalties.* 18 U.S.C. 216(a) sets forth the maximum imprisonment terms for felony and misdemeanor violations of section 207. Section 216(a) also provides for the imposition of criminal fines for violations of section 207. For the amount of the criminal fines that may be imposed, *see* 18 U.S.C. 3571.

(2) *Civil penalties.* 18 U.S.C. 216(b) authorizes the Attorney General to take

civil actions to impose civil penalties for violations of section 207 and sets forth the amounts of the civil fines.

(3) *Injunctive relief.* 18 U.S.C. 216(c) authorizes the Attorney General to seek an order from a United States District Court to prohibit a person from engaging in conduct which violates section 207.

(c) *Other relief.* In addition to any other remedies provided by law, the United States may, pursuant to 18 U.S.C. 218, void or rescind contracts, transactions, and other obligations of the United States in the event of a final conviction pursuant to section 207, and recover the amount expended or the thing transferred or its reasonable value.

**Note to § 2641.103:** A person or entity who aids, abets, counsels, commands, induces, or procures commission of a violation of section 207 is punishable as a principal under 18 U.S.C. 2.

#### § 2641.104 Definitions.

For purposes of this part:

*Agency* means any department, independent establishment, commission, administration, authority, board or bureau of the United States or Government corporation. The term includes any independent agency not in the legislative or judicial branches.

*Agency ethics official* means the designated agency ethics official (DAEO) or the alternate DAEO, appointed in accordance with 5 CFR 2638.202(b), and any deputy ethics official described in 5 CFR 2638.204.

*Department* means one of the executive departments listed in 5 U.S.C. 101.

*Designated agency ethics official* (DAEO) means the official designated under 5 CFR 2638.201 to coordinate and manage an agency’s ethics program.

*Employee* means, for purposes of determining the individuals subject to 18 U.S.C. 207, any officer or employee of the executive branch or any independent agency that is not a part of the legislative or judicial branches. The term does not include the President or the Vice President (except, with respect to the Vice President, as otherwise provided), an enlisted member of the Armed Forces, or an officer or employee of the District of Columbia. The term includes an individual appointed as an employee or detailed to the Federal Government under the Intergovernmental Personnel Act (5 U.S.C. 3371–3376) or specifically subject to section 207 under the terms of another statute. It encompasses senior employees, very senior employees, and special Government employees. (This term is redefined elsewhere in this part, as necessary, when the term is used for other purposes.)