

advise a foreign government or foreign political party.

(b) *Exceptions and waivers.* The prohibition of 18 U.S.C. 207(f) does not apply to a former senior or former very senior employee who is:

(1) Acting on behalf of the United States. See § 2641.301(a). (Note, however, the limitation in § 2641.301(a)(2)(ii).)

(2) Acting as an elected State or local government official. See § 2641.301(b).

(3) Testifying under oath. See § 2641.301(f).

(4) Acting on behalf of an international organization pursuant to a waiver. See § 2641.301(h).

(5) Acting as an employee of a Government-owned, contractor operated entity pursuant to a waiver. See § 2641.301(i).

(6) Subject to a waiver issued for certain positions. See § 2641.301(j).

(c) *Commencement and length of restriction*—(1) *Generally.* Except as provided in paragraph (c)(2) of this section, 18 U.S.C. 207(f) is a one-year restriction. The one-year period is measured from the date when an employee ceases to be a senior or very senior employee, not from the termination of Government service, unless the two occur simultaneously. See example 1 to paragraph (d) of § 2641.204.

(2) *U.S. Trade Representative or Deputy U.S. Trade Representative.* 18 U.S.C. 207(f) is a permanent restriction as applied to a former U.S. Trade Representative or Deputy U.S. Trade Representative.

(d) *Represent, aid, or advise.*  
[Reserved]

(e) *With the intent to influence.*  
[Reserved]

(f) *Decision of employee of an agency.*  
[Reserved]

(g) *Foreign entity.* [Reserved]

### Subpart C—Exceptions, Waivers and Separate Components

#### § 2641.301 Statutory exceptions and waivers.

(a) *Exception for acting on behalf of United States.* A former employee is not prohibited by any of the prohibitions of 18 U.S.C. 207 from engaging in any activity on behalf of the United States.

(1) *United States.* For purposes of this paragraph, the term “United States” means:

(i) The executive branch (including a Government corporation);

(ii) The legislative branch; or

(iii) The judicial branch.

(2) *On behalf of the United States.* A former employee will be deemed to engage in the activity on behalf of the

United States if he acts in accordance with paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(i) *As employee of the United States.* A former employee engages in an activity on behalf of the United States when he carries out official duties as a current employee of the United States.

(ii) *As other than employee of the United States.* (A) Provided that he does not represent, aid, or advise a foreign entity in violation of 18 U.S.C. 207(f), a former employee engages in an activity on behalf of the United States when he serves:

(1) As a representative of the United States pursuant to a specific agreement with the United States to provide representational services involving a fiduciary duty to the United States; or

(2) As a witness called by the United States (including a Congressional committee or subcommittee) to testify at a Congressional hearing (even if applicable procedural rules do not require him to declare by oath or affirmation that he will testify truthfully).

(B) A former employee will not be deemed to engage in an activity on behalf of the United States merely because he 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.

**Note to paragraph (a)(2)(ii):** See also § 2641.301(f) concerning the permissibility of testimony under oath, including testimony as an expert witness, when a former employee is called as a witness by the United States.

*Example 1 to paragraph (a):* An employee of the Department of Labor (DOL) transfers to become an employee of the Pension Benefit Guaranty Corporation (PBGC). The PBGC, a wholly owned Government corporation, is a corporation in which the United States has a proprietary interest. The former DOL employee may press the PBGC's point of view in a meeting with DOL employees concerning an airline bankruptcy case in which he was personally and substantially involved while at the DOL. His communications to the DOL on behalf of the PBGC would be made on behalf of the United States.

*Example 2 to paragraph (a):* A Federal Transit Administration (FTA) employee recommended against the funding of a certain subway project. After terminating Government service, she is hired by a Congressman as a member of his staff to perform a variety of duties, including miscellaneous services for the Congressman's constituents. The former employee may contact the FTA on behalf of a constituent

group as part of her official duties in order to argue for the reversal of the subway funding decision in which she participated while still an employee of the FTA. Her communications to the FTA on behalf of the constituent group would be made on behalf of the United States.

*Example 3 to paragraph (a):* A Postal Service attorney participated in discussions with the Office of Personnel Management (OPM) concerning a dispute over the mailing of health plan brochures. After terminating Government service, the attorney joins a law firm as a partner. He is assigned by the firm's managing partner to represent the Postal Service pursuant to a contract requiring the firm to provide certain legal services. The former senior employee may represent the Postal Service in meetings with OPM concerning the dispute about the health plan brochures. The former senior employee's suggestions to the Postal Service concerning strategy and his arguments to OPM concerning the dispute would be made on behalf of the United States (even though he is also acting on behalf of his law firm when he performs representational services for the United States). A communication to the Postal Service concerning a disagreement about the law firm's fee, however, would not be made on behalf of the United States.

*Example 4 to paragraph (a):* A former senior employee of the Food and Drug Administration (FDA), now an employee of a drug company, is called by a Congressional committee to give unsworn testimony concerning the desirability of instituting cost controls in the pharmaceutical industry. The former senior employee may address the committee even though her testimony will unavoidably also be directed to a current employee of the FDA who has also been asked to testify as a member of the same panel of experts. The former employee's communications at the hearing, provided at the request of the United States, would be made on behalf of the United States.

*Example 5 to paragraph (a):* A National Security Agency (NSA) analyst drafted the specifications for a contract that was awarded to the Secure Data Corporation to develop prototype software for the processing of foreign intelligence information. After terminating Government service, the analyst is hired by the corporation. The former employee may not attempt to persuade NSC officials that the software is in accord with the specifications. Although the development of the software is expected to significantly enhance the processing of foreign intelligence information and the former employee's opinions might be useful to current NSC employees, his communications would not be made on behalf of the United States.

*Example 6 to paragraph (a):* A senior employee at the Department of the Air Force specialized in issues relating to the effective utilization of personnel. After terminating Government service, the former senior employee is hired by a contractor operating a Federally Funded Research and Development Center (FFRDC). The FFRDC is not a “Government corporation” as defined in § 2641.104. The former senior employee may not attempt to convince the Air Force of