

the manner in which Air Force funding should be allocated among projects proposed to be undertaken by the FFRDC. Although the work performed by the FFRDC will be determined by the Air Force, may be accomplished at Government-owned facilities, and will benefit the Government, her communications would not be made on behalf of the United States.

Example 7 to paragraph (a): A Department of Justice (DOJ) attorney represented the United States in a civil enforcement action against a company that had engaged in fraudulent activity. The settlement of the case required that the company correct certain deficiencies in its operating procedures. After terminating Government service, the attorney is hired by the company. When DOJ auditors schedule a meeting with the company's legal staff to review company actions since the settlement, the former employee may not attempt to persuade the auditors that the company is complying with the terms of the settlement. Although the former employee's insights might facilitate the audit, his communications would not be made on behalf of the United States even though the Government's auditors initiated the contact with the former employee.

Note to paragraph (a): See also example 9 to paragraph (j) of § 2641.202 and example 1 to paragraph (d) of § 2641.204.

(b) *Exception for acting on behalf of State or local government as elected official.* A former employee is not prohibited by any of the prohibitions of 18 U.S.C. 207 from engaging in any post-employment activity on behalf of one or more State or local governments, provided the activity is undertaken in carrying out official duties as an elected official of a State or local government.

Example 1 to paragraph (b): A former employee of the Department of Housing and Urban Development (HUD) participated personally and substantially in the evaluation of a grant application from a certain city. After terminating Government service, he was elected mayor of that city. The former employee may contact an Assistant Secretary at HUD to argue that additional funds are due the city under the terms of the grant.

Example 2 to paragraph (b): A former employee of the Federal Highway Administration (FHWA) participated personally and substantially in the decision to provide funding for a bridge across the White River in Arkansas. After terminating Government service, she accepted the Governor's offer to head the highway department in Arkansas. A communication to or appearance before the FHWA concerning the terms of the construction grant would not be made as an elected official of a State or local government.

(c) *Acting on behalf of specified entities.* A former senior or very senior employee is not prohibited by 18 U.S.C. 207(c) or (d), or §§ 2641.204 or 2641.205, from making a communication or appearance on behalf of one or more entities specified in

paragraph (c)(1) of this section, provided the communication or appearance is made in carrying out official duties as an employee of a specified entity.

(1) *Specified entities.* For purposes of this paragraph, a specified entity is:

(i) An agency or instrumentality of a State or local government;

(ii) A hospital or medical research organization, if exempted from taxation under 26 U.S.C. 501(c)(3); or

(iii) An accredited, degree-granting institution of higher education, as defined in 20 U.S.C. 1001.

(2) *Employee.* For purposes of this paragraph, the term "employee" of a specified entity means a person who has an employee-employer relationship with an entity specified in paragraph (c)(1) of this section. It includes a person who is employed to work part-time for a specified entity. The term excludes an individual performing services for a specified entity as a consultant or independent contractor.

Example 1 to paragraph (c): A senior employee leaves her position at the National Institutes of Health (NIH) and takes a full-time position at the Gene Research Foundation, a tax-exempt organization pursuant to 26 U.S.C. 501(c)(3). As an employee of a 501(c)(3) tax-exempt medical research organization, the former senior employee is not barred by 18 U.S.C. 207(c) from representing the Foundation before the NIH.

Example 2 to paragraph (c): A former senior employee of the Environmental Protection Agency (EPA) joins a law firm in Richmond, Virginia. The firm is hired by the Commonwealth of Virginia to represent it in discussions with the EPA about an environmental impact statement concerning the construction of a highway interchange. The former senior employee's arguments concerning the environmental impact statement would not be made as an employee of the Commonwealth of Virginia.

Example 3 to paragraph (c): A former senior employee becomes an employee of the ABC Association. The ABC Association is a nonprofit organization whose membership consists of a broad representation of State health agencies and senior State health officials, and it performs services from which certain State governments benefit, including collecting information from its members and conveying that information and views to the Federal Government. However, the ABC Association has not been delegated authority by any State government to perform any governmental functions, and it does not operate under the regulatory, financial, or management control of any state government. Therefore, the ABC Association is not an agency or instrumentality of a state government, and the former senior employee may not represent the organization before his former agency within one year after terminating his senior employee position.

(d) *Exception for uncompensated statements based on special knowledge.*

A former senior or very senior employee is not prohibited by 18 U.S.C. 207(c) or (d), or §§ 2641.204 or 2641.205, from making a statement based on his own special knowledge in the particular area that is the subject of the statement, provided that he receives no compensation for making the statement.

(1) *Special knowledge.* A former employee has special knowledge concerning a subject area if he is familiar with the subject area as a result of education, interaction with experts, or other unique or particularized experience.

(2) *Statement.* A statement for purposes of this paragraph is a communication of facts directly observed by the former employee.

(3) *Compensation.* Compensation includes any form of remuneration or income that is given in consideration, in whole or in part, for the statement. It does not include the payment of actual and necessary expenses incurred in connection with making the statement.

Example 1 to paragraph (d): The Chairman of the Council of Economic Advisors was personally and substantially involved in discussions with other White House officials concerning the advisability of a three-phase reduction in the capital gains tax. After Government service, the former Chairman affiliates with a nonprofit group that advocates a position on the three-phase capital gains issue that is similar to his own. The former Chairman, who receives no salary from the nonprofit organization, may meet with the current Chairman on the organization's behalf to state what steps had previously been taken by the Council to address the issue. The statement would be permissible even if the nonprofit organization reimbursed the former Chairman for his actual and necessary travel expenses incurred in connection with making the statement.

Example 2 to paragraph (d): A former senior employee becomes a government relations consultant, and he enters into a \$5,000 per month retainer agreement with XYZ Corporation for government relations services. He would like to meet with his former agency to discuss a regulatory matter involving his client. Even though he would not be paid by XYZ specifically for this particular meeting, he nevertheless would receive compensation for any statements at the meeting, because of the monthly payments under his standing retainer agreement. Therefore he may not rely on the exemption for uncompensated statements based on special knowledge.

(e) *Exception for furnishing scientific or technological information.* A former employee is not prohibited by 18 U.S.C. 207(a), (c), or (d), or §§ 2641.201, 2641.202, 2641.204, or 2641.205, from making communications, including appearances, solely for the purpose of furnishing scientific or technological information, provided the