

SECTION 207 PROHIBITIONS AFFECTED

Exception/Waiver	(a)(1)	(a)(2)	(b)	(c)	(d)	(f)
(1) Acting for the United States, see § 2641.301(a)	•	•	•	•	•	•
(2) Elected State or local government official, see § 2641.301(b)	•	•	•	•	•	•
(3) Acting for specified entities, see § 2641.301(c)	•	•
(4) Special knowledge, see § 2641.301(d)	•	•
(5) Scientific or technological information, see § 2641.301(e)	•	•	•	•
(6) Testimony, see § 2641.301(f)	•	•	•	•	•	•
(7) Acting for a candidate or political party, see § 2641.301(g)	•	•
(8) Acting for an international organization, see § 2641.301(h)	•	•	•	•	•	•
(9) Employee of a Government-owned, contractor operated entity, see § 2641.301(i)	•	•	•	•	•	•
(10) Waiver for certain positions, see § 2641.301(j)	•	•

§ 2641.302 Separate agency components.

(a) *Designation.* For purposes of 18 U.S.C. 207(c) only, and § 2641.204, the Director of the Office of Government Ethics may designate agency “components” that are distinct and separate from the “parent” agency and from each other. Absent such designation, the representational bar of section 207(c) extends to the whole of the agency in which the former senior employee served. An eligible former senior employee who served in the *parent* agency is not barred by section 207(c) from making communications to or appearances before any employee of any designated component of the parent, but is barred as to any employee of the parent or of any agency or bureau of the parent that has not been designated. An eligible former senior employee who served in a *designated component* of the parent agency is barred from communicating to or making an appearance before any employee of that designated component, but is not barred as to any employee of the parent, of another designated component, or of any other agency or bureau of the parent that has not been designated.

Example 1 to paragraph (a): While employed in the Office of the Secretary of Defense, a former career Senior Executive Service employee was employed in a position for which the rate of basic pay exceeded that payable for level 5 of the Senior Executive Service. He is prohibited from contacting the Secretary of Defense and DOD’s Inspector General. However, because eligible under paragraph (b) of this section to benefit from component designation procedures, he is not prohibited by 18 U.S.C. 207(c) from contacting the Secretary of the Army. (The Department of the Army is a

designated component of the parent, DOD. The Office of the Secretary of Defense and the Office of the DOD Inspector General are both part of the parent, DOD. See the listing of DOD components in appendix B to this part.)

Example 2 to paragraph (a): Because eligible under paragraph (b) of this section to benefit from component designation procedures, a former Navy Admiral who last served as the Vice Chief of Naval Operations is not prohibited by 18 U.S.C. 207(c) from contacting the Secretary of Defense, the Secretary of the Army, or DOD’s Inspector General. He is prohibited from contacting the Secretary of the Navy. (The Department of the Navy is a designated component of the parent, DOD. The Office of the Secretary of Defense and the Office of the DOD Inspector General are both part of the parent. See the listing of DOD components in appendix B to this part.)

(b) *Eligible former senior employees.* All former senior employees are eligible to benefit from this procedure except those who were senior employees by virtue of having been:

(1) Employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311–5318 (the Executive Schedule) (*see example 1 to paragraph (j)(1) of § 2641.301*);

(2) Appointed by the President to a position under 3 U.S.C. 105(a)(2)(B); or

(3) Appointed by the Vice President to a position under 3 U.S.C. 106(a)(1)(B).

Example 1 to paragraph (b): A former senior employee who had served as Deputy Commissioner of the Internal Revenue Service is not eligible to benefit from the designation of components for the Department of the Treasury because the position of Deputy Commissioner is listed in 5 U.S.C. 5316, at a rate of pay payable for level V of the Executive Schedule.

(c) *Criteria for designation.* A component designation must be based on findings that:

(1) The component is an agency or bureau, within a parent agency, that exercises functions which are distinct and separate from the functions of the parent agency and from the functions of other components of that parent as shown by relevant factors which may include, but are not limited to:

(i) The component’s creation by statute or a statutory reference indicating that it exercises functions which are distinct and separate;

(ii) The component’s exercise of distinct and separate subject matter or geographical jurisdiction;

(iii) The degree of supervision exercised by the parent over the component;

(iv) Whether the component exercises responsibilities that cut across organizational lines within the parent;

(v) The size of the component in absolute terms; and

(vi) The size of the component in relation to other agencies or bureaus within the parent.

(2) There exists no potential for the use of undue influence or unfair advantage based on past Government service.

(d) *Subdivision of components.* The Director will not ordinarily designate agencies that are encompassed by or otherwise supervised by an existing designated component.

(e) *Procedures.* Distinct and separate components shall be designated in accordance with the following procedure:

(1) *Agency recommendation.* A designated agency ethics official may, at any time, recommend the designation of