

## § 223.2

207 (a), (b) or (c) and implementing regulations published by the Office of Government Ethics (5 CFR part 737).

### § 223.2 Report of violations.

On receipt of information regarding a possible violation of the statutory or regulatory post-employment restrictions by a former employee and after determining that such information does not appear to be frivolous, the General Counsel shall provide such information to the Director of the Office of Government Ethics and to the Criminal Division, Department of Justice. Any investigation or administrative action shall be coordinated with the Department of Justice to avoid prejudicing possible criminal proceedings. If the Department of Justice informs the Agency that it does not intend to institute criminal proceedings, such coordination shall no longer be required and the General Counsel is free to decide whether to pursue administrative action.

### § 223.3 Initiation of proceeding.

Whenever the General Counsel has reasonable cause to believe that a former Government employee has violated the statutory or regulatory post-employment restrictions, he or she shall initiate an administrative action by providing the former Government employee with written notice of intention to institute administrative action. Notice must include:

- (a) A statement of allegations and the basis thereof sufficiently detailed to enable the former Government employee to prepare an adequate defense;
- (b) Notification of the right to respond to the allegations in writing and/or to request a hearing, together with an explanation of the method by which a hearing may be requested; and
- (c) A statement that, in the absence of a request for a hearing, the General Counsel shall issue a final decision based upon the evidence gathered to date, including any written reply made by the former Government employee.

### § 223.4 Examiner.

When a former Government employee after receiving adequate notice requests a hearing, a presiding official (hereinafter referred to as "examiner")

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shall be appointed by the Administrator to make an initial decision. The examiner shall be a responsible person who is impartial and who has not participated in any manner in the decision to initiate the proceeding. The hearing officer shall be an individual with suitable experience and training to conduct the hearing, reach a determination and render an initial decision in an equitable manner.

### § 223.5 Agency representative.

The General Counsel shall appoint an agency representative to present evidence and otherwise participate in the hearing.

### § 223.6 Time, date and place of hearing.

The examiner shall establish a reasonable time, date and place to conduct the hearing. In establishing a date, the examiner shall give due regard to the former employee's need for:

- (a) Adequate time to prepare a defense properly, and
- (b) An expeditious resolution of allegations that may be damaging to his or her reputation.

### § 223.7 Rights of parties at hearing.

A hearing shall include, at a minimum, the following rights for both parties:

- (a) To represent oneself or to be represented by counsel;
- (b) To examine or cross-examine witnesses;
- (c) To submit evidence (including the use of interrogatories);
- (d) To present oral arguments; and
- (e) To receive a transcript of recording of the proceedings on request.

In any hearing, the agency has the burden of proof and must establish substantial evidence of a violation.

### § 223.8 Initial decision.

The examiner shall issue an initial decision based exclusively on matters of record in the proceedings and shall set forth all findings of fact and conclusions of law relevant to the matters at issue.

### § 223.9 Appeal.

Within twenty days of the date of initial decision, either party may appeal