

**OFFICE OF GOVERNMENT ETHICS**

**AGENCY: Office of Government Ethics**

**5 CFR Part 2637**

**Post-Employment Conflict of Interest Restrictions;  
Amendments**

**RIN 3209-AA14**

**57 FR 62467**

**Thursday, December 31, 1992**

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**ACTION:** Final rule; amendments

**SUMMARY:** Part 2637 of 5 CFR provides guidance concerning the post-employment restrictions set forth in the prior version of 18 U.S.C. 207 (1988) as they continue to apply to individuals who terminated Government service (or a "Senior" Government position) before January 1, 1991, the effective date of statutory amendments enacted by the Ethics Reform Act of 1989. Since no former employee who terminated service before that date could any longer be subject to the prior version of either 18 U.S.C. 207 (b)(ii) or (c), this rule amends part 2637 to delete certain information relating to these two statutory provisions.

**EFFECTIVE DATE:** January 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Julia Loring Eirinberg, Office of Government Ethics, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-6325.

## **SUPPLEMENTARY INFORMATION:**

### **A. Substantive Discussion**

Since 1980, 5 CFR part 2637 (formerly 5 CFR part 737) has provided guidance concerning the post-employment conflict of interest restrictions of 18 U.S.C. 207. The statutory restrictions were substantially revised by the Ethics Reform Act of 1989, Public Law No. 101-194, 103 Stat. 1716, with technical amendments enacted by Public Law No. 101-280, 104 Stat. 149 (1990). Employees who terminated Government service prior to January 1, 1991, the effective date of the Ethics Reform Act amendments, remain subject to the previous version of 18 U.S.C. 207. As a consequence, the Office of Government Ethics is continuing to publish part 2637 as guidance concerning that version of the statute.

Two sections of the previous version of 18 U.S.C. 207, 207(b)(ii) and section 207(c), applied only to so-called "Senior Employees." Section 207(b)(ii) was a two-year restriction against aiding or assisting in representing any other person by personal presence at an appearance by another, commencing upon an employee's termination from a Senior Employee position. Section 207(c) was a one-year restriction against the official generally contacting his or her former agency. Some employees were automatically Senior Employees by virtue of their rate of pay or pay grade, while others were Senior Employees by virtue of occupying positions designated as "Senior" by the Director of the Office of Government Ethics. The list of designated positions was periodically revised and then published in part 2637, most recently as reflected in section 2637.216 of title 5 of the 1992 edition of the CFR.

For one year after the termination of Senior service, 18 U.S.C. 207(c) restricted a Senior Employee from making certain communications or appearances before the department or agency in which he or she formerly served. The Director of the Office of Government Ethics had authority to take action to designate certain statutory or administratively created components so that the scope of the representational bar would be limited to less than the whole of a department or agency. The various statutory components were last listed in section 2637.214 of the 1992 edition of title 5 of the CFR, while the various administratively created components were last listed in 5 CFR 2637.215 of that edition.

As noted above, the previous version of 18 U.S.C. 207 continues to apply to employees who terminated Government service (or Senior

service) prior to January 1, 1991. Thus, for example, these individuals continue to be subject to the permanent restriction set forth in section 207(a) of the law. However, since no former Senior Employee who terminated senior service prior to that date could any longer be subject to the one-year or two-year bars as of January 1, 1993, the separate agency and Senior Employee listings in sections 2637.214, 2637.215 and 2637.216 of the regulation are being deleted from the CFR effective that date. We are adding notes to the three sections that will briefly explain the reason for the deletions.

The Office of Government Ethics has published substantive guidance concerning the current Ethics Reform Act version of 18 U.S.C. 207 in part 2641 of this chapter. This guidance includes a new definition of "senior employee" and a listing of component designations for purposes of the new version of section 207(c).

We have chosen not to delete the substantive discussions of prior section 207 (b)(ii) and (c) of 18 U.S.C. (nor of the generally applicable official responsibility two-year bar of section 207(b)(i) which is also expiring) appearing in sections of part 2637, largely because part 2641 of this chapter does not yet set forth comprehensive guidance in relation to the present version of prior paragraphs underlying statutory provisions remain unchanged, part 2637 remains persuasive concerning the interpretation of the newer, currently effective version of 18 U.S.C. 207, including section 207 (a)(2) and (c). Also, at least for the present, we have determined that the discussion of section 207(b)(ii) in part 2637 should continue to be published for its historical value.

## **B. Matters of Regulatory Procedure**

### **Administrative Procedure Act**

Pursuant to 5 U.S.C. 553 (b) and (d), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these revisions. The notice and delayed effective date are being waived because these amendments to the part 2637 regulation concern matters of agency organization, practice and procedure, and because they merely reflect the expiration of certain post-Government employment statutory restrictions.

### **E.O. 12291, Federal Regulation**

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

### **Regulatory Flexibility Act**

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant impact on a substantial number of small entities because it only affects certain former Federal employees.

### **Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget.

### **List of Subjects in 5 CFR Part 2637**

Conflict of interests, Government employees.

Approved: December 22, 1992.

**Stephen D. Potts,**  
**Director, Office of Government Ethics.**