

§ 2637.102

other major sources of expertise. Such a flow of skills can promote efficiency and communication between the Government and private activities, and it is essential to the success of many Government programs. Instead, only certain acts which are detrimental to public confidence in the Government are prohibited.

(6) Departments and agencies have primary responsibility for the administrative enforcement of the post employment restrictions found in the Act. The Department of Justice may initiate criminal enforcement in cases involving aggravated circumstances; agency heads are required to report substantiated allegations of violations of 18 U.S.C. 207 to the Department of Justice and the Director, OGE. It is essential that title V of the Act be enforced so as to advance its objectives, which include improvement in government efficiency, equal treatment for equal claims, greater public confidence in the integrity of their government, elimination of the use of public office for private gain, and securing the integrity of the government's policy-making processes. Departments and agencies should avoid enforcement actions that do not advance these objectives but instead frustrate the Government's ability to employ the skilled persons who are needed to make the programs of the Federal Government succeed. Special attention should be given to the need to preserve the free flow of expertise, especially in scientific, technological and other technical areas, from private activities to the government.

(7) The examples contained in these regulations are intended to give guidance, but are illustrative, not comprehensive. Each agency may provide additional illustration and guidance in its own regulations, consistent with that contained herein, in order to address specific problems arising in the context of a particular agency's operations.

(8) Agencies have the responsibility to provide assistance promptly to former Government employees who seek advice on specific problems. The Office of Government Ethics will provide advice, promptly, upon request, to designated agency ethics officials in

5 CFR Ch. XVI (1-1-03 Edition)

such situations, but will first coordinate with the Department of Justice on unresolved or difficult issues.

(9) These regulations do not supplant restrictions that may be contained in laws other than 18 U.S.C. 207 and do not incorporate restrictions contained in the code of conduct of a profession of which an employee may be a member.

[45 FR 7406, Feb. 1, 1980; 45 FR 9253, Feb. 12, 1980, as amended at 49 FR 33118, Aug. 21, 1984; 50 FR 1203, Jan. 10, 1985. Redesignated at 54 FR 50230, Dec. 5, 1989; 55 FR 27179, July 2, 1990; 55 FR 27933, July 6, 1990]

§ 2637.102 Definitions.

(a) *Statutory definitions.* The following are defined terms which largely repeat portions of the text of the statute. They are set out here to permit a simplified presentation of statutory requirements in the regulations which follow. Other definitions, which supplement the statutory language, are listed in paragraph (b) of this section and are set forth in detail in the substantive regulations.

(1) *United States or Government* means any department, agency, court, court-martial, or any civil, military or naval commission of the United States, the District of Columbia, or any officer or employee thereof.

(2) *Agency* includes an Executive Department, a Government corporation and an independent establishment of the executive branch, which includes an independent commission. (See 18 U.S.C. 6.)

(3) *Government Employee* includes any officer or employee of the Executive Branch (as defined in 18 U.S.C. 202 and, e.g., 5 U.S.C. 2104 and 2105); those appointed or detailed under 5 U.S.C. 3374, and a Special Government Employee, but shall not include an individual performing services for the United States as an independent contractor under a personal service contract.

(4) *Former Government Employee* means one who was, and is no longer, a Government employee.

(5) *Special Government Employee* means an officer or employee of an agency who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of

three hundred and sixty five consecutive days, temporary duties either on a full time or intermittent basis (18 U.S.C. 202).

(6) *Senior Employee* means an officer or employee named in, or designated by the Director pursuant to, section 207(d) of title 18 U.S.C. to whom 207(b)(ii) and (c) shall apply (See § 2637.211 of this part.)

(7) *Particular Government matter involving a specific party* means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest.

(b) *Interpretative definitions.* Other terms defined and interpreted in the substantive regulations are:

(1) *Acting as Agent or Attorney:* (See § 2637.201(b).)

(2) *Actually Pending:* (See § 2637.202(c).)

(3) *Communicating with Intent to Influence:* (See § 2637.201(b).)

(4) *Direct and Substantial Interest:* (See § 2637.204(f).)

(5) *Participate Personally and Substantially:* (See § 2637.201(d).)

(6) *Particular Matter Involving a Specific Party or Parties:* (See § 2637.201(c).)

(7) *Particular Matter (without parties):* (See § 2637.204(d).)

(8) *Official Responsibility:* (See § 2637.202(b).)

(9) *Rate of Pay:* (See § 2637.211(b)(4).)

Subpart B—Substantive Provisions

§ 2637.201 Restrictions on any former Government employee's acting as representative as to a particular matter in which the employee personally and substantially participated.

(a) *Basic prohibition of 18 U.S.C. 207(a).* No former Government employee, after terminating Government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Gov-

ernment matter involving a specific party, (3) in which matter such employee participated personally and substantially as a Government employee.

(b) *Representation: Acting as agent or attorney, or other representative in an appearance, or communicating with intent to influence—*(1) *Attorneys and agents.* The target of this provision is the former employee who participates in a particular matter while employed by the Government and later “switches sides” by representing another person on the same matter.

[NOTE: The examples in these regulations do not incorporate the special statutory restrictions on Senior Employees, except where the terms “Senior Employee” or “Senior” are expressly used.]

Example 1: A lawyer in the Department of Justice personally works on an antitrust case involving Q Company. After leaving the Department, he is asked by Q Company to represent it in that case. He may not do so.

(2) *Others.* The statutory prohibition covers any other former employee, including managerial and technical personnel, who represents another person in an appearance or, by other communication, attempts to influence the Government concerning a particular matter in which he or she was involved. For example, a former technical employee may not act as a manufacturer's promotional or contract representative to the Government on a particular matter in which he or she participated. Nor could such employee appear as an expert witness against the Government in connection with such a matter. (See § 2637.208 for specific rules relating to expert witnesses.)

(3) *Appearances; communications made with intent to influence.* An appearance occurs when an individual is physically present before the United States in either a formal or informal setting or conveys material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes for example, correspondence, or telephone calls.

Example 1: An appearance occurs when a former employee meets with an agency employee personally to discuss a matter; or when he submits a brief in an agency administrative proceeding in his own name.