

EXERCISE HANDOUT—FOREIGN ENTITY BAN

George Wilson was a career SES appointee at the Agency for Technology Promotion (ATP). His salary level made him a senior employee for purposes of 18 USC 207(c). He left his government position six months ago. After taking some time off to pursue other interests, he is now starting his own consulting business. He anticipates that his clients will include US and foreign private businesses, as well as, possibly, certain foreign governments.

Assume you are the ethics official for ATP. Think about how you would advise George concerning some of his post-employment plans below. Note that George's questions fall within 3 general categories: How is 207(f) is Broader Than the Other Post-Employment Restrictions? What is a Foreign Entity? What is Aiding or Advising with Intent to Influence the US?

How is 207(f) Broader than Other Post-Employment Bars?

1. (a) May George advise a private US company about whom it should contact and what it should say to resolve a pending disagreement with ATP over certain policies?

(b) May George engage in the same conduct on behalf of a client that is a foreign government?

2. (a) May George represent a private telecommunications company in connection with a decision before the Federal Communications Commission?

(b) May he engage in the same conduct for a foreign government client?

3. (a) May George represent a private company in a meeting with a Member of the House of Representatives concerning a pending matter at your agency?

(b) May George participate in the same Congressional meeting on behalf of a foreign government?

(c) If George does not attend the meeting with the Member of Congress, can he advise officials of the foreign government about what points they should make when they meet with the Member?

(d) May George meet with Congressional staffers on behalf of a foreign government, as long as no Members of Congress are present?

(e) Extra Credit: Could George appear as an attorney in Federal Court on behalf of a foreign government that is suing a private US company?

4. (a) George serves as President of nonprofit organization devoted to international affairs, and he writes a Washington Post op-ed piece on behalf of the organization advocating that ATP adopt some new policy. May he do this?

(b) What if George is paid by a foreign government to write the same op-ed piece?

What is a Foreign Entity?

5. (a) May George represent a privately-owned foreign company as it navigates the FDA pre-market approval process for a new drug?

(b) What if the company is owned by a foreign government?

(c) What if the government-owned manufacturer that has been given a monopoly by the foreign government for a particular commercial product or service?

6. (a) An international monetary organization, whose membership is comprised of a number of countries, wants to retain George to influence US financial regulatory policies. May George engage in this activity on behalf of the international organization?

(b) Turning the tables a little, a foreign government wants George's help in influencing an international organization. Officials of the foreign government are preparing for a meeting with an international environmental organization. Current US officials participate in this organization, including some serving on details from the EPA under 5 U.S.C. § 3343. May George assist the foreign government officials in preparing for these meetings?

What is Aiding or Advising With the Intent to Influence the US?

7. (a) One of George's clients is a US import company that is interested in easing certain trade barriers on goods from a certain foreign country. The client seeks George's advice on how to persuade various US trade officials. The government of the foreign country also is interested in easing the same trade barriers and is making its own pitch to some of the same US trade officials. May George provide the advice his client has requested?

(b) What if George's client asks George to meet with representatives of the foreign government to share ideas about how to approach US officials on this issue. May George do this?

8. George also wants to work for a law firm that has certain foreign government clients. The firm in particular wants him to help write a "White Paper" for one foreign government. The White Paper will describe all the legal requirements that a foreign government would have to satisfy in order to set up a nonprofit corporation in the US, including a review of all applicable federal requirements and procedural hurdles. The foreign government has not yet decided whether to set up the nonprofit but is evaluating its options. May George do this?