

Summary of the Post-Employment Restrictions
of the Ethics in Government Act of 1978 and
Important Interpretations in the Regulations
-Contains June 1979 Amendments-

Introduction

The Ethics in Government Act (the Act) added new restrictions to existing provisions of 18 U.S.C. section 207. Generally speaking, this statute prohibits a former Government employee from acting as another person's representative to the Government in matters in which the employee had been involved while in the Government. It also prohibits a former "Senior Employee" from attempting to influence his former agency on a matter of agency business in the first year after his leaving the Government. New amendments passed in June 1979 eliminate certain unintended effects and contain certain exemptions for State and local governments, and nonprofit medical and higher education institutions.

What is prohibited depends upon the degree of the former employee's involvement in a matter while in Government, and whether he was one of a specified group of high-ranking employees ("Senior Employees").

Nothing in the Act requires a former employee to decline employment with any organization, regardless of his or her dealings with that organization while a Government employee.

Here is how the provisions work. There are only four basic restrictions:

A. Restrictions Applicable to all Former Employees

1. Permanent Bar. A former Government employee may not serve as another person's representative to the Government on a case, contractual matter or other similar application or proceeding in which he or she participated "personally and substantially" while a Government employee.

- o This prohibition attacks "switching sides." There are two important limitations. First, the former employee is not restricted unless the matter in which he previously participated (1) was a "particular matter involving specific parties" and (2) is the same matter in which he now attempts to represent another before the Government.

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Thus, where an employee's prior work was limited to general matters, say, the design of a program, policy, general rulemaking, or technical concepts, he is not restricted by this prohibition as to any particular matters, which may involve this prior work, that is, specific contracts, cases or grants.

- o Second, this bar requires that the employee have been personally involved in the matter in a substantial way.
- o The kind of representation that is restricted includes not only acting as another's attorney or agent, but any other kind of representation or communication with intent to influence the United States. This includes promotional and contract representatives.

2. Two-Year Bar. This is basically the same bar as above, except that it applies for only two years and covers all particular matters which were actually pending under the former employee's "official responsibility" in his last year of service. An employee's official responsibility is usually defined by statute, regulations, written delegation of authority or job description.

- o There may be times when a former employee is in doubt as to whether a matter was under his official responsibility, or whether it is the same "particular matter" as that with which he was involved or whether the United States still has an interest in the matter. His former agency has an obligation to advise him promptly on those questions, as provided in the regulations.

The foregoing restrictions are effective July 1, 1979.

B. Restrictions Applicable Only to "Senior Employees"

3. Two-Year Bar on Assisting in Representation by Personal Presence. For two years after leaving Government employment, a former Senior Employee may not assist in the representation of another person by personal presence at an appearance before the Government on any particular matter in which he or she personally and substantially participated while in Government.

- o It is important to note that this restriction does not bar a Senior Employee from assisting on a matter in which he participated while in Government, but only from assisting "in

representing" by "personal presence" at an "appearance." Thus such employee could work on a contract with which he was involved while in the Government and could manage a company, institution or university where his decisions determine the manner in which his organization will perform under a Government contract or grant. He may not render assistance on-site while a negotiation or proceeding is ongoing.

4. One-Year Ban on Attempts to Influence Former Agency. For one year after leaving employment, a former Senior Employee may not represent another person or himself in attempting to influence his own former agency on a matter pending before, or of substantial interest to, such agency.

- o There are exemptions. This provision does not cover communications made on behalf of a State or local government, a degree-granting institute of higher education or a nonprofit hospital or medical research institution by an elected officials of such a government, or a person principally employed by such government, institute or medical organization.
- o This "anti-revolving-door" provision, is different from the previous restrictions in a number of ways. First, it does not require that the former employee have had any prior involvement in the particular matter. Second, the matters covered are broader: they need not involve specific parties. So the former employee could not, for example, attempt to influence rulemaking or policy formation. Third, it is limited to contact with his former agency; he may communicate with any other part of the Government. Fourth, the restriction covers the employee's representation of himself.
- o There are a number of general matters which the restriction does not cover. Among these are: purely social or informational communications — transmission of filings which do not require Governmental action — personal matters — representing oneself in any judicial or administrative proceeding — any expression of personal view where former employee has no pecuniary interest — response to the former agency's request for information — participation as the principal researcher or "investigator" under Government grants.
- o The one year bar may be limited to only part of an agency by the Director of the Office of

Government Ethics, in certain cases if he finds that there are distinct parts which exercise separate functions. The Director's determinations, made in consultation with the departments or agencies, will be published.

• What is a Senior Employee?

There are three groups of Senior Employees. Two are named automatically by statute: civilians at the Executive Level and active duty uniformed service officers at O-9 and above. The other group is made up of persons holding positions which must first be "designated" as Senior Employees by the Director of the Office of Government Ethics. The positions must involve significant decision-making or supervisory responsibility and be at a basic rate of pay of GS-17 or above or within the Senior Executive Service, or in the case of the uniformed services, be held by active duty commissioned officers at O-7 or O-8.

Other Important Features

o The restrictions do not apply to communications made solely for the purpose of furnishing scientific or technological information pursuant to agency procedures. Office of Government Ethics regulations treat this area realistically, permitting communications to determine the nature of technical problems facing the Government, to provide approaches to such problems and to inform the Government of the practical significance of scientific and technological alternatives.

o There is a "fair notice" provision which ensures that employees who continue in Government employment in reliance on the regulations will not suddenly be made subject to any future changes. Any changes in the regulations which add greater restrictions will not become applicable to an employee unless he remains with the Government more than five months after the new rule is published in final form.

o Effective dates: The broadening of the provisions applicable to all employees is effective July 1, 1979. The new provisions applicable to Senior Employees will become effective as to Executive Level civilian employees and uniformed service officers of the grade of O-9 and above on July 1, 1979. Those positions at GS-17 or above or in the Senior Executive Service, or held by O-7 and O-8 uniformed service officers and which are designated by the Director will be subject to the Senior Employee restrictions as of February 28, 1980.