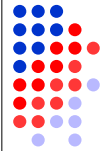


The New 207 Rule: Overview and Highlights

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Outline

1. History – how we got here
2. Structure – “architecture” of rule
3. Highlights - incl. significant changes



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1. History

1962: Section 207 first enacted; no regulations

1978-

1980: Ethics in Government Act amendments; post-EIGA regulations, 5 CFR Part 2637 (formerly Part 737)

1989: Ethics Reform Act amendments (misc. amendments later)

1991: Limited interim regulations, 5 C.F.R. Part 2641

2003: Proposed comprehensive Part 2641; comments

2008: Final Part 2641 published; Part 2637 removed



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2. Structure of the Rule

Subpart A—General

Provisions on the purpose and applicability of the rule, enforcement, ethics advice, and definitions



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2. Structure of the Rule (cont.)

Subpart B—Prohibitions

Seven sections--discussing each executive branch prohibition

Structure of each section:

- (a) Basic statement of prohibition
- (b) All applicable exceptions/waivers
- (c) Commencement and length of prohibition
- (d) Elements of the prohibition



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2. Structure of the Rule (cont.)

Subpart C—Exceptions, Waivers, and Component Designations

Guidance on statutory provisions permitting relief from prohibitions

Includes easy reference chart—aligns each restriction with applicable exceptions



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2. Structure of the Rule (cont.)



Appendices

Appendix A—Positions Exempted from 207(c) & 207(f)

Appendix B—Separate Agency Components for 207(c)

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3. Highlights



- **Focus on Subpart B:**
 - the substantive heart of the rule
 - separate section on each of 7 prohibitions
- **Subpart C:**
 - selected provisions

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3. Highlights—Subpart B



2641.201—Permanent Restriction

Explains section 207(a)(1)

Also sets out many elements
common to other prohibitions

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3. Highlights-Subpart B (cont.)



- **Communication or appearance – par. (d)**
 - contact vs. behind-the-scenes
 - retains 3rd party intermediary concept, Ex. 5

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3. Highlights-Subpart B (cont.)



- **Intent to influence – par. (e)**
 - seeking discretionary action, or seeking to affect action in connection with an issue or aspect of a matter which involves the potential for dispute
 - retains contract performance, Ex. 5 to par. (e)(2)

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3. Highlights-Subpart B (cont.)



- **To or before an Employee of the U.S. – par. (f)**
 - directed to and received by an employee of the government
 - again—retains 3rd party intermediary, Ex. 7
 - public commentary, par. (f)(3)

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3. Highlights-Subpart B (cont.)



- Personal and substantial participation - par. (i)
 - Retains “purposeful forbearance”
 - But adds Ex. 7 to illustrate

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3. Highlights-Subpart B (cont.)



- U.S. party/direct and substantial interest - par. (j)
 - procedures and standards for determining
 - New Example 1-US interested but not party

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3. Highlights-Subpart B (cont.)



- On behalf of another person - par. (g)
 - consent/control
 - “on behalf of contractor” issue

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3. Highlights-Subpart B (cont.)



- Particular matter involving specific parties – par. (h)
 - versus matters of general applicability
 - preliminary or informal stages
 - the “same” particular matter
 - the most changes from proposed rule

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3. Highlights-Subpart B (cont.)



Noteworthy changes to 2641.201(h):

- Removed “activity or undertaking”: (h)(1)
- Different example of parties at preliminary stages of contract: (h)(4)(Ex. 5)
- New provision on international agreements: (h)(2)
- New provision on separate contracts: (h)(5)(ii)(B)
- New provision on “umbrella” contracts: (h)(5)(ii)(C)

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3. Highlights-Subpart B (cont.)



2641.202–Two Year Restriction for Matters under Official Responsibility

- Explains 207(a)(2)
- Many cross-references to elements in 2641.201
- Focus on meaning of “pending under official responsibility,” incl. temporary duties, recusal, leave status
- No noteworthy changes from proposed rule

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3. Highlights-Subpart B (cont.)



2641.203–Trade and Treaty Negotiations

- 207(b)
- Mainly tracks statutory language
- Reserves paragraphs for future rulemaking
- No trade negotiations covered now
 - authority expired, as noted in 2006 OGE Report to Congress
 - treaties still covered

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3. Highlights-Subpart B (cont.)



2641.204–Senior Employee Cooling-off Period

- Explains 207(c)
- Definition of “senior employee” in 2641.104
 - amended for statutory changes
 - does not cover details-unlike interim rule

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3. Highlights-Subpart B (cont.)



- Applicability to SGEs and IPAs- par. (c)
 - no changes to proposed rule
 - SGE basic pay formula
 - note day-counting DAEOgram
 - IPA cost sharing implications

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3. Highlights-Subpart B (cont.)



- Clarification on contacts with detailees
 - detailees to former agency, (g)(1)(iii)
 - detailees from former agency, (g)(3)(ii)

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3. Highlights-Subpart B (cont.)



2641.205–Very Senior Employee Cooling-off

- Explains 207(d)
- Definition of very senior –2641.104
- New 2 year period-2007 amendments
- Contacts with EL officials
 - retains “contacts with subordinates”
 - if intend info will be re-conveyed directly with attribution, 2641.205(g)(Note) & Example 5

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3. Highlights-Subpart B (cont.)



2641.206–One-year Restriction on Representing, Aiding, or Advising a Foreign Entity

- 207(f)
- Mainly tracks statutory language
- Reserves for future rulemaking
 - Change: contacts with Congress, par. (a)
- Limit on acting on behalf of US, par. (b)(1)

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3. Highlights-Subpart B (cont.)



2641.207—One-year Restriction on IT Exchange Assignees

- 207(l)—added by E-Govt Act
- New section in rule
- New program: little experience
- Mainly tracks statutory language
- Reserves for future rulemaking

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Highlights-Subpart C



2641.301(a)-Acting on Behalf of US

- Combines 2 things:
 - official duties exception in 207(j)(1)
 - covers all restrictions
 - requires employee status
 - parenthetical exclusions: “(except the United States)”
 - found in all but 207(f)

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Highlights-Subpart C (cont.)



On behalf of US, cont.

- Scope if not employee
 - agreement to provide representational services to US
 - no blanket Government K exception
 - change: “fiduciary services” deleted
 - called by the US to testify in Congress
- Not enough that Government benefits, initiates, funds

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3. Highlights-Subpart C (cont.)



2641.301(d)-Uncompensated Statements Based on Special Knowledge

- 207(j)(4)
- Only covers 207(c) & (d)
- “Statement”—limited to facts observed
 - declined to cover discussion of “principles”
 - but allow incidental references
 - deleted “directly” to allow inferences

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3. Highlights of Subpart C (cont.)



2641.301(e)—Scientific and Technological Information

- 207(j)(5): agency procedures or certification
- No change to proposed rule
- Compliance with agency procedures
 - declined to require notice/other procedure
- Individual certifications
 - narrower than prior law/rule: solely to furnish scientific and technological info

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3. Highlights of Subpart C (cont.)



2641.301(f)—Testimony under Oath and Statements under Penalty of Perjury

- 207(j)(6)
- No change to proposed rule
- Expert testimony treated differently than under prior law/rule
 - only barred under permanent ban
 - court order can lift permanent ban
 - subpoena not sufficient
 - declined to address court-appointed experts

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3. Highlights of Subpart C (cont.)



2641.301(h)–International Organizations

- 207(j)(3)—waiver by Secretary of State
- Statutory exception did not exist until 1989
- But old rule had provision—did not require action by Secretary of State
- Change to proposed rule: waiver to current employee with post-employment plans

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3. Highlights of Subpart C (cont.)



2641.301(j)–Exemption of Specific Positions

- 207(c)(2)(C)
- Exempts from both 207(c)— and (f)
 - so rule addresses potential for abuse under (f) too
- Only change to proposed rule: new category of senior employee cannot benefit (IT Exchange)

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3. Highlights of Subpart C (cont.)



2641.302–Component Designations for 207(c)

- 207(h)
- No change to proposed rule
- More guidance than interim on separate/distinct
- Important change to interim rule
 - senior employees who have already terminated can benefit from new designations

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