



**POST  
EMPLOYMENT**

# **OGE JOB AID**

## **A TOOL FOR ETHICS OFFICIALS**

This job aid is designed to assist you in analyzing § 207 situations in general and the most frequently used post-employment prohibitions.

**FEBRUARY 2011**



## Analyzing 18 U.S.C. § 207: A Worksheet

This job aid prepares you to advise an employee (except a military enlisted employee) who left Government service on or after 1/1/91 on whether a proposed post-employment activity is prohibited by 18 U.S.C. § 207. Use this worksheet to conclude whether the proposed activity is prohibited. These general steps may not completely and accurately capture the analysis necessary for all specific factual cases. When giving advice, always consult the complete set of laws, rules, and opinions that apply to the situation.

### **General Steps for Analyzing 18 U.S.C. § 207**

Step 1. Identify any proposed post-employment activities.

February 2011

**General Steps for Analyzing 18 U.S.C. § 207 (con't)**

**Step 2. Classify the employee.**

All – regardless of grade or rank (§ 207 does not cover enlisted military)  
Go to Step 3.1

Senior Go to Step 3.2  
A “senior” employee is one of the following:

- Any individual employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. 5311-5318, except 5312
- Any individual whose rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (most SES employees)
- O-7 or above active duty commissioned officer (generals and admirals)
- Appointed by the President to a position under 3 U.S.C. § 105(a)(2)(B)
- Appointed by the Vice President to a position under 3 U.S.C. § 106(a)(1)(B)
- Assigned from a private sector organization to an agency under the Information Technology Exchange Program, 5 U.S.C. Chapter 37.

Very Senior Go to Step 3.3  
A “very senior” employee is one of the following:

- The Vice President
- Executive Level I employees listed in 5 U.S.C. § 5312 or any individual employed in a position at the **exact** rate of pay payable for level I of the Executive Schedule
- Employed in the Executive Office of the President and paid at Executive Level II
- Appointed by the President to a position under 3 U.S.C. § 105(a)(2)(A)
- Appointed by the Vice President to a position under 3 U.S.C. § 106(a)(1)(A)

**General Steps for Analyzing 18 U.S.C. § 207 (con't)**

Step 3. Consider which prohibitions **may** apply.

Step 3.1. For all employees (except enlisted military):

- (a)(1)
- (a)(2)
- (b)

Step 3.2. For senior employees:

- |                                 |                              |
|---------------------------------|------------------------------|
| <input type="checkbox"/> (a)(1) | <input type="checkbox"/> (c) |
| <input type="checkbox"/> (a)(2) | <input type="checkbox"/> (f) |
| <input type="checkbox"/> (b)    | <input type="checkbox"/> (l) |

Step 3.3. For very senior employees:

- |                                 |                              |
|---------------------------------|------------------------------|
| <input type="checkbox"/> (a)(1) | <input type="checkbox"/> (d) |
| <input type="checkbox"/> (a)(2) | <input type="checkbox"/> (f) |
| <input type="checkbox"/> (b)    |                              |

Step 4. Analyze whether the proposed activities are prohibited. If so, go to Step 5.

*Use the Analyzing 18 U.S.C. § 207(a)(1) worksheet, Analyzing 18 U.S.C. § 207(a)(2) worksheet, and Analyzing 18 U.S.C. § 207(c) worksheet, if applicable.*

**General Steps for Analyzing 18 U.S.C. § 207 (con't)**

Step 5. Decide whether an exception applies or a waiver is appropriate, if the activities are prohibited. NOTE: The exceptions do not apply to § 207(l). Also, if you used the analysis worksheets for (a)(1), (a)(2), and (c) referenced in Step 4, you have already analyzed the exceptions.

Step 5.1. For §§ 207(a)(1) and (a)(2):

- Acting on behalf of the U.S.
- Acting on behalf of State or local government as elected official
- International organizations
- Scientific or technological information
- Testimony
- Presidential waiver (rare)

Step 5.2. For §§ 207(b) and (f):

- Acting on behalf of the U.S.
- Acting on behalf of State or local government as elected official
- International organizations
- Testimony
- Presidential waiver (rare)
- OGE Director waiver (FOR § 207(f) ONLY)

Step 5.3. For §§ 207(c) and (d):

- Acting on behalf of the U.S.
- Acting on behalf of State or local government as elected official)
- State and local Government and institutions, hospitals, and organizations
- International organizations
- Special knowledge
- Scientific or technological information
- Testimony
- Presidential waiver (rare)
- OGE Director waiver (FOR § 207(c) ONLY)



## Analyzing 18 U.S.C. § 207(a)(1): A Worksheet

This job aid prepares you to advise an employee (except a military enlisted employee) on whether a proposed post-employment activity is prohibited by 18 U.S.C. § 207(a)(1). Use this worksheet to go through the § 207(a)(1) elements and conclude whether the proposed activity is prohibited. When giving advice, always consult the complete set of laws, rules, and opinions that apply to the situation.

### § 207(a)(1) Elements

1. Does the proposed post-employment activity involve an appearance or communication?

Yes

Go to question 2

No

Go to “no” under question 9

2. Would the appearance or communication be to or before an employee of any department, agency, court, or court-martial?

Yes

Go to question 3

No

Go to “no” under question 9

3. Would the appearance or communication be made with the intent to influence?

Yes

Go to question 4

No

Go to “no” under question 9

4. Would the appearance or communication be on behalf of any other person?

Yes

Go to question 5

No

Go to “no” under question 9

5. Would the appearance or communication concern a particular matter involving specific parties?

Yes

Go to question 6

No

Go to “no” under question 9

**§ 207(a)(1) Elements**

6. Would the appearance or communication involve the same matter the employee worked on while a Government employee?

Yes

Go to question 7

No

Go to “no” under question 9

7. Did the employee have personal and substantial participation in the matter?

Yes

Go to question 8

No

Go to “no” under question 9

8. Is the U.S. a party or does the U.S. have a direct and substantial interest in the matter?

Yes

Go to question 9

No

Go to “no” under question 9

9. CONCLUSION: Does § 207(a)(1) prohibit this proposed post-employment activity?

Yes

Go to question 10

No

The employee may perform this proposed post-employment activity, unless another § 207 prohibition applies.

**§ 207(a)(1) Exceptions and Waivers**

10. Would the proposed post-employment activity be performed in carrying out official duties on behalf of the U.S.?

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 11

**§ 207(a)(1) Exceptions and Waivers**

11. Would the proposed post-employment activity be performed in carrying out official duties as an elected official of a state or local Government?

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 12

12. Would the proposed post-employment activity involve representing, aiding, or advising an international organization in which the U.S. participates? The Secretary of State must certify in advance that such activity is in the interest of the U.S.

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 13

13. Would the proposed post-employment communication be made solely for the purpose of furnishing scientific or technological information in accordance with procedures acceptable to the agency involved?

OR, has the head of the agency concerned published a certification in the *Federal Register* stating that (1) the former employee has outstanding qualifications in a scientific, technological, or other technical discipline, (2) the former employee is acting concerning a particular matter which requires such qualifications, and (3) the national interest would be served by the former employee's participation?

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 14

### § 207(a)(1) Exceptions and Waivers

14. Would the proposed post-employment activity involve giving testimony under oath or making statements required to be made under penalty of perjury? NOTE: Unless expert opinion testimony is given pursuant to court order, a former employee may not provide such testimony on a matter on behalf of any other person except the U.S. (or the Congress) if he is subject to the lifetime prohibition contained in § 207(a)(1) relating to that matter.

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 15

15. Has the President issued a waiver for this employee's reemployment at a Government-owned, contractor-operated entity? (rare)

Yes

The employee may perform this proposed post-employment activity.

No

The employee may not perform this proposed post-employment activity for the **life of the matter**.



## Analyzing 18 U.S.C. § 207(a)(2): A Worksheet

This job aid prepares you to advise an employee (except a military enlisted employee) on whether a proposed post-employment activity is prohibited by 18 U.S.C. § 207(a)(2). Use this worksheet to go through the § 207(a)(2) elements and conclude whether the proposed activity is prohibited. When giving advice, always consult the complete set of laws, rules, and opinions that apply to the situation.

### § 207(a)(2) Key Elements

1. Has the employee been out of the Government two years or less?

Yes

Go to question 2

No

Go to "no" under question 9

2. Does the proposed post-employment activity involve an appearance or communication?

Yes

Go to question 3

No

Go to "no" under question 9

3. Would the appearance or communication be to or before an employee of any department, agency, court, or court-martial?

Yes

Go to question 4

No

Go to "no" under question 9

4. Would the appearance or communication be made with the intent to influence?

Yes

Go to question 5

No

Go to "no" under question 9

5. Would the appearance or communication be made on behalf of any other person?

Yes

Go to question 6

No

Go to "no" under question 9

**§ 207(a)(2) Key Elements**

6. Would the appearance or communication concern a particular matter involving specific parties?

Yes

Go to question 7

No

Go to “no” under question 9

7. Does the appearance or communication involve the same matter pending under the employee’s official responsibility during his last year of Government service?

Yes

Go to question 8

No

Go to “no” under question 9

8. Is the U.S. is a party or does the U.S. have a direct and substantial interest in the matter?

Yes

Go to question 9

No

Go to “no” under question 9

9. CONCLUSION: Does § 207(a)(2) prohibit this proposed post-employment activity?

Yes

Go to question 10

No

The employee may perform this proposed post-employment activity, unless another § 207 prohibition applies.

**§ 207(a)(2) Exceptions and Waivers**

10. Would the proposed post-employment activity be performed in carrying out official duties on behalf of the U.S.? (official Government duties exception)

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 11

## § 207(a)(2) Exceptions and Waivers

11. Would the proposed post-employment activity be performed in carrying out official duties as an elected official of a state or local Government?

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 12

12. Would the proposed post-employment activity involve representing, aiding, or advising an international organization in which the U.S. participates? The Secretary of State must certify in advance that such activity is in the interest of the U.S.

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 13

13. Would the proposed post-employment communication be made solely for the purpose of furnishing scientific or technological information in accordance with procedures acceptable to the agency involved?

OR, has the head of the agency concerned published a certification in the *Federal Register* stating that (1) the former employee has outstanding qualifications in a scientific, technological, or other technical discipline, (2) the former employee is acting concerning a particular matter which requires such qualifications, and (3) the national interest would be served by the former employee's participation?

14. Would the proposed post-employment activity involve giving testimony under oath or making statements required to be made under penalty of perjury?

15. Has the President issued a waiver for this employee's reemployment at a Government-owned, contractor-operated entity? (rare)

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 14

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 15

Yes

The employee may perform this proposed post-employment activity.

No

The employee may not perform this proposed post-employment activity for **two years** after leaving the Government.



## Analyzing 18 U.S.C. § 207(c): A Worksheet

This job aid prepares you to advise an employee (except a military enlisted employee) on whether a proposed post-employment activity is prohibited by 18 U.S.C. § 207(c). Use this worksheet to go through the § 207(c) elements and conclude whether the proposed activity is prohibited. When giving advice, always consult the complete set of laws, rules, and opinions that apply to the situation.

### § 207(c) Elements

1. Is the employee a “senior” employee?

A “senior” employee is one of the following:

- Any individual employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. §§ 5311-5318, except § 5312
- Any individual whose rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (most SES employees)
- O-7 or above active duty commissioned officer (generals and admirals)
- Appointed by the President to a position under 3 U.S.C. § 105(a)(2)(B)
- Appointed by the Vice President to a position under 3 U.S.C. § 106(a)(1)(B)
- Assigned from a private sector organization to an agency under the Information Technology Exchange Program, 5 U.S.C. Chapter 37.

Yes

Go to question 2

No

No further analysis of § 207(c) is needed.

**§ 207(c) Elements**

2. Has the employee been out of the senior service one year or less?

Yes

Go to question 3

No

Go to “no” under question 8

3. Does the proposed post-employment activity involve an appearance or communication?

Yes

Go to question 4

No

Go to “no” under question 8

4. Would the appearance or communication be to or before an employee of a former department or agency where the employee served within one year of leaving senior service?

Yes

Go to question 5

No

Go to “no” under question 8

5. Would the appearance or communication be made with the intent to influence?

Yes

Go to question 5a

No

Go to “no” under question 8

5a. Is a component designation available to the former employee?

Yes

Go to question 5b

No

Go to “no” under question 8

5b. Would the appearance or communication be to or before an employee of a “designated component” of a former department or agency where the employee served within one year of leaving senior service?

Yes

Go to question 5c

No

Go to “no” under question 8

## § 207(c) Elements

5c. Is the employee eligible to use “component” designations?

Any individual whose rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule (most SES employees)

O-7 or above active duty commissioned officer (generals and admirals)

Assigned from a private sector organization to an agency under the Information Technology Exchange Program, 5 U.S.C. Chapter 37.

6. Would the appearance or communication be on behalf of any other person?

7. Would the appearance or communication be in connection with any matter where the employee is seeking official action?

8. CONCLUSION: Does § 207(c) prohibit this proposed post-employment activity?

Yes

Go to question 6

No

Go to “no” under question 8

Yes

Go to question 7

No

Go to “no” under question 8

Yes

Go to question 8

No

Go to “no” under question 8

Yes

Go to question 9

No

The employee may perform this proposed post-employment activity, unless another prohibition prohibits the activity.

**§ 207(c) Exceptions and Waivers**

9. Would the proposed post-employment activity be performed in carrying out official duties on behalf of the U.S.?

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 10

10. Would the proposed post-employment activity be performed in carrying out official duties as an elected official of a state or local Government?

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 11

11. Would the proposed post-employment activity be made in carrying out official duties as an employee of (1) an agency or instrumentality of a State or local Government, (2) an accredited degree-granting institution of higher education as defined in 20 U.S.C. § 1001, or (3) a hospital or medical research organization exempted from taxation under 26 U.S.C. § 501 (c) (3)?

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 12

### § 207(c) Exceptions and Waivers

12. Would the proposed post-employment activity involve representing, aiding, or advising an international organization in which the U.S. participates? The Secretary of State must certify in advance that such activity is in the interest of the U.S.

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 13

13. Would the proposed post-employment activity be a statement based on the employee's own special knowledge in the particular area that is the subject of the statement **and** the employee receives no compensation for making the statement?

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 14

**§ 207(c) Exceptions and Waivers**

14. Would the proposed post-employment communication be made solely for the purpose of furnishing scientific or technological information in accordance with procedures acceptable to the agency involved?

OR, has the head of the agency concerned published a certification in the *Federal Register* stating that (1) the former employee has outstanding qualifications in a scientific, technological, or other technical discipline, (2) the former employee is acting concerning a particular matter which requires such qualifications, and (3) the national interest would be served by the former employee's participation?

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 15

**§ 207(c) Exceptions and Waivers**

15. Would the proposed post-employment activity involve giving testimony under oath or making statements required to be made under penalty of perjury? NOTE: Unless expert opinion testimony is given pursuant to court order, a former employee may not provide such testimony on a matter on behalf of any other person except the U.S. (or the Congress) if he is subject to the lifetime prohibition contained in § 207 (a) (1) relating to that matter.

Yes

The employee may perform this proposed post-employment activity.

No

Go the question 16

16. Would the proposed post-employment activity be on behalf of a candidate for Federal or State office, an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party?

Yes

The employee may perform this proposed post-employment activity.

No

Go the question 17

**§ 207(c) Exceptions and Waivers**

17. Has the President issued a waiver for this employee's reemployment at a Government-owned, contractor-operated entity? (Presidential waiver – rare)

Yes

The employee may perform this proposed post-employment activity.

No

Go to question 18

18. Has the OGE Director waived the § 207(c) restriction for this employee's position?

Yes

The employee may perform this proposed post-employment activity.

No

The employee may not perform this proposed post-employment activity for one year after leaving a senior position.