



USAID
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Employee Responsibilities, Conduct and Political Activity

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EMPLOYEE RESPONSIBILITIES, CONDUCT AND POLITICAL ACTIVITY

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EMPLOYEE RESPONSIBILITIES, CONDUCT AND POLITICAL ACTIVITY

2A. Purpose

This Chapter describes the Agency's ethics program and contains the statutory and regulatory provisions governing employee responsibilities and conduct, including limitations on political activity, financial disclosure requirements and post employment restrictions.

****END OF SECTION****

2B. Agency Ethics Officials

1. The Designated Agency Ethics Official/Counselor on Ethical Conduct and Conflicts of Interests (Counselor) is the officer or employee who is designated by the head of the Agency to coordinate and manage the Agency's ethics program in accordance with the Ethics in Government Act of 1978, as amended, applicable Executive Orders, government-wide regulations issued by the U.S. Office of Personnel Management (OPM) Office of Government Ethics and Agency regulations.

2. The Designated Agency Ethics Official/Counselor for AID is the Senior Deputy General Counsel. The alternate is the Assistant General Counsel for Employee and Public Affairs.

3. The Assistant General Counsel for Employee and Public Affairs (GC/EPA) and the Attorney Advisors assigned to that office are designated Deputy Agency Ethics Officials/Deputy Counselors. Receipt of any document by a Deputy shall be deemed to be receipt of the document by the principal officer.

****END OF SECTION****

2C. Policy and Authorities for Current Employees

1. Code of Ethics for Government Service. All AID employees are expected to adhere to the principles expressed in the Code. It also applies to the families of employees where adherence is implicit or where nonadherence may tend to be prejudicial to the foreign policy interests of the U.S. Government. The text of the Code is at Att. 2A.

2. Statutory Provisions. Sections 203, 205 and 208 of Title 18, United States Code, are set out as Att. 2B. The regulations on Employee Responsibilities and Conduct at Section 10-735-216 set forth additional miscellaneous statutory provisions. The regulations are in Att. 2C.

3. Uniform Regulations on Employee Responsibilities and Conduct. For text see Att. 2C.

4. Uniform Regulations on Gifts and Decorations from Foreign Governments. For text see Att. 2D.

5. Uniform Regulations on Speaking, Writing, and Teaching. For text see Att. 2E.

6. Reporting of Crimes Involving Government Officials and Employees or Similar Offenses by Other Persons. For text see Att. 2F.

7. Political Activity. For text see Att. 2G.

****END OF SECTION****

2D. Financial Disclosure

See also, Interim Update Dataset: Major Functional Series 400,

Interim Update #11, 1995 Annual Filing Requirement for SF-278 Report (Rev. 1/91) Covering Calendar Year 1994.

1. Executive Personnel Financial Disclosure Reports

a. Scope. The following employees ("covered employees") must file an Executive Personnel Financial Disclosure Report. (SF 278, hereinafter referred to as "report," is set forth at Att. 2H or **OGE 278, Public Disclosure Report**.)

(1) An employee of the Agency, including a special Government employee, whose position is classified at Executive Level GS-16, AD-16, SES or above;

(2) An officer of the Foreign Service whose class; i.e., personal rank, is SFS, regardless of the rank of the position held; e.g., FS-1 in an SFS position is not a covered employee but an SFS employee in an FS-1 position is a covered employee;

(3) An employee in a position which is of a confidential or policy-making character (Schedule C) unless the position has been excluded by the Office of Government Ethics. (Note: The Office of Government Ethics has excluded all secretarial and motor vehicle operator Schedule C positions);

(4) The Designated Agency Ethics Official; and

(5) Such other employees as the Office of Government Ethics may designate. (Note: To date no such positions have been designated.)

b. Filing Requirements

(1) Initial report. A covered employee must file an initial report as follows:

(a) An individual who assumes a position of a covered employee must file within thirty days of assuming the position (e.g., a GS-15 promoted to GS-16) unless the individual has left another covered position within thirty days prior to assuming the new position; or has already filed a report in connection with a nomination or as a candidate for the position.

(b) An individual who is nominated for a position requiring the advice and consent of the Senate must file within five days of the date the nomination is forwarded to the Senate.

(2) Annual Report. An individual who occupies a covered position and performs the duties of that position for more than sixty days during any calendar year must file on or before May 15 of the succeeding calendar year. The reports filed on or before May 15 are to include information for the preceding calendar year.

(3) Termination Report. An individual whose employment in a covered position terminates (e.g., retirement) must file within thirty days of termination unless the individual has accepted employment in another covered position. The report required by this subsection covers the preceding calendar year, unless the May 15 report covering that year has been filed, plus the period of the current year up to the individual's termination from employment.

(4) Penalty for Failure to File or Falsifying Reports. The Attorney General may bring a civil action in any U.S. District Court having jurisdiction against any individual who knowingly and willfully falsifies or who knowingly or willfully fails to file or report any information required by the Ethics in Government Act of 1978, as amended. The court in which such action is brought may assess against such individual a civil penalty not to exceed \$5,000. Knowing or willful falsification of information may also subject the reporting individual to criminal prosecution under 18 U.S.C. 1001, leading to a fine of not more than \$10,000 or imprisonment for not more than five years or both.

c. Procedures for Initial Reports

(1) Presidential Appointment of the Principal Officers of the Agency. The Designated Agency Ethics Official or designee shall (1) obtain a completed report from proposed presidential appointees within five days of the submission of the individual's name to the Senate for its advice and consent, and (2) transmit the report to the Office of Government Ethics.

(2) New or Promoted Employees. The Civil Service Personnel Division (M/PM/CSP), the Foreign Service Personnel Division (M/PM/FSP), or the Executive Personnel Management Staff (M/PM/EPM) shall obtain a completed report from each new employee appointed to, or employee being converted or promoted to, a covered position. The report must be submitted to the General Counsel within thirty days after the date of the employee's appointment or promotion.

d. Procedures for Annual Reports

(1) On March 1 of each year, the head of each AID Office or Bureau is requested to designate a subordinate officer who will--(a) Identify the covered employees, i.e., every employee who must file a report by reason of the employee's personal rank in the Foreign Service or of the position which the employee occupies in the Civil Service;

(b) Distribute the reports to these employees;

(c) Request that each covered employee fill out a report;

(d) Obtain a current position description for each covered employee and identify the employee to whom the description relates;

(e) Request missing information from an employee who has filed an incomplete report; and

(f) Forward the completed reports to the Office of the General Counsel no later than May 15 with certification that all employees have complied.

(2) The Office of the General Counsel will on March 1 of each year issue an AID General Notice initiating the SF 278 or **OGE 278** submission cycle.

(3) As an aid in identifying covered employees, the Office of Personnel Management (M/PM/PDE/RP) will provide to each Office or Bureau a list of employees whose incumbency in a Civil Service position or whose personal Foreign Service rank subjects them to the reporting obligations. In those Offices or Bureaus having an Executive Officer, that officer is normally assigned this responsibility.

(4) In case of doubt whether an employee is obligated to submit a report, the officer required to obtain the report from the employee should consult GC/EPA.

(5) The name and location of each officer who fails or refuses to submit a report shall be provided to GC/EPA, together with a statement of the efforts made by the Office or Bureau to obtain the officer's compliance with the obligation.

(6) Overseas Employees. Geographic Bureaus and Offices having overseas employees (e.g., IG) will be responsible for reports from employees assigned overseas as well as from their AID/W employees.

(7) Complement and Detailed Employees. Acting through its Administrative Officer, M/PM will obtain position descriptions and completed reports from all covered employees on complements and domestic and overseas details.

e. Procedures for Termination Reports

(1) Completed reports will be obtained by the principal AID officer at overseas posts for employees overseas, and by M/PM/W, M/PM/OS and M/PM/EPM for employees in AID/W. The completed report will be forwarded to the Designated Agency Ethics Official within thirty days after leaving the covered position.

(2) Periodically, M/PM will provide the Designated Agency Ethics Official with a list of employees who have been separated. The Designated Agency Ethics Official will notify M/PM of any former employees who have not filed reports. M/PM will notify any such former employees of the requirement to file and the applicable penalties.

f. Public Release of Reports

(1) As required by the Ethics in Government Act of 1978, as amended, reports are available to the public upon written application.

(2) A person requesting a copy or inspection of reports is required to make a written application stating:

(a) The requestor's name, occupation and address;

(b) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(c) That the requestor is aware of the prohibitions on obtaining or using the report.

(3) A report shall be made available to the public for a period of six years after receipt of the report by GC/EPA.

g. Failure to File

(1) When the Office of the General Counsel has been informed by a Bureau or Office that an employee has failed or refuses to submit a completed report, the General Counsel or designee, shall take the following steps:

(a) Communicate to the employee the reasons for which the obligation to file has been applied to the employee, and the General Counsel's obligation:

1. To refer to the Attorney General the name of any individual who the Office of the General Counsel has reason to believe has knowingly and willfully falsified or knowingly or willfully failed to file or to report any information required to be reported; or

2. To recommend that disciplinary action be taken by the Agency against the employee.

(b) Notify the employee in writing that the decision to refer the employee's name to the Attorney General as well as to take any appropriate disciplinary action in accordance with applicable law or regulation is under consideration and that the employee is required within ten working days of receipt of the written notice to submit the completed report or to furnish any evidence or arguments before further action is taken.

(c) After receipt of the employee's reply or where no reply has been submitted, review the entire available record, decide whether to accept the employee's argument, or to refer the employee's name to the Attorney General or recommend to M/PM that disciplinary action be taken (or both) and notify the employee in writing of the decision and the reasons for it.

(2) An employee may appeal a decision of the General Counsel or designee that:

(a) The employee must submit a report;

(b) Specific information is required to be submitted;

(c) The required information has not been submitted;

(d) A conflict of interest exists; or

(e) The matter be referred to the Attorney General and/or disciplinary action be proposed.

(3) The appeal directed to the General Counsel shall be in writing, and shall be sent within twenty working days after an employee receives written notice of the decision to be appealed. This appeal shall not preclude any other appeal provided by law or regulation of OPM or of the Office of Government Ethics.

(4) The General Counsel or designee shall decide the appeal on the written record and notify the employee in writing of the decision and of the reasons for it.

2. Confidential Statements of Employment and Financial Interest

a. Scope

(1) Obligated Employees. Those AID employees, including special Government employees, specified in 22 CFR 10.735-401, other than those designated as "not required to submit statements" by 22 CFR 10.735-402 (see Attachment 2C, "obligated employees") must submit Confidential Statements of Financial Interests (Confidential Statements). (Note: To date the AID Administrator or designee has not made any exclusion determination under 22 CFR 10.735.402(a) nor has the AID Administrator granted any waiver under 22 CFR 10.735-402(c). Applications for exclusion determination or waiver may be directed to GC/EPA).

(2) Forms. The Confidential Statement of Employment and Financial Interests (For Use By Government Employees), Optional Form I06, is set forth at Att. 2I and the Confidential Statement of Employment and Financial Interests (For Use By Special Government Employees), Form AID 4-450, is set forth at Att. 2J. (The forms are hereafter referred to as Confidential Statements.)

b. Submission Requirements

(1) Initial Statement. At least ten days prior to entrance on duty, a prospective obligated employee (new, converted or promoted), including a special Government employee, shall submit a Confidential Statement to the

Personnel Staffing Specialist (Backstop) assigned to process the employee's personnel actions.

(2) Annual/Extension Supplementary Statements

(a) As of September 30 of each year, an obligated employee, other than a special Government employee, shall submit a Supplementary Confidential Statement indicating any changes in, or additions to, the information previously submitted. The supplementary report shall be submitted through the officer designated in subject 2D1 (d) to the obligated employee's Backstop.

(b) At the time the appointment of an obligated employee who is a special Government employee is extended, the employee shall submit a Supplementary Confidential Statement indicating any changes in, or additions to, the information previously submitted. The supplementary report shall be submitted to the employee's Backstop. No action to extend an appointment will be taken unless such supplementary report is submitted not later than ten days prior to the expiration of said appointment.

(c) If no change or addition occurs, a negative (i.e., "no change") report is required.

c. Submission Procedures.

(1) Initial Statement: New, Converted or Promoted Employee. The Office of Personnel Management, M/PM/W, M/PM/OS or M/PM/EPM, shall request a completed Confidential Statement from each prospective employee being appointed to, or employee being converted or promoted to, a civil service position or a personal Foreign Service rank subject to reporting obligations. The Confidential Statement should be enclosed in a sealed envelope marked "Personal Information -Addressee Only" and delivered or sent by internal mail, diplomatic pouch or other suitable means to the (prospective) obligated employee's Backstop.

(2) Extension of a Special Government Employee. The same procedures as outlined in 2c(1) above shall apply to a special Government employee at the time the employee's appointment is extended.

(3) Supplementary Statement. Each officer designated pursuant to Subpart 2D1d(1) (Designated Officer), in addition to the duties therein set forth, will -

a) Identify the obligated employees;

(b) Distribute reporting forms to these employees;

(c) Request that each obligated employee submit a Supplementary Confidential Statement, as appropriate (see 2D2b (2a)), under "Personal Information-Addressee Only" cover to the Designated Officer for forwarding to the Backstop and follow up as required to ensure compliance; and

(d) Report to GC/EPA the name and location of any obligated employee who fails or refuses to submit a Supplementary Confidential Statement, together with a statement of the efforts made to obtain the employee's compliance with the obligation.

(4) Questionable Cases. In case of doubt whether an employee is obligated to submit a Confidential Statement, the officer required to obtain the Statement from the employee should consult GC/EPA.

(5) Overseas Employees. Geographic Bureaus and Offices having overseas employees will be responsible for obtaining Confidential Statements from employees based abroad as well as from their AID/W employees.

(6) Complement and Detailed Employees. Acting through its Administration Officer, M/PM will obtain Confidential Statements from all covered employees on complements and domestic and overseas details.

d. Action by Backstops. Each Backstop will --(1) Review each Confidential Statement as received and request missing information from an employee who has submitted an incomplete Statement; and

(2) File completed Confidential Statement.

e. Submission Cycle. The Office of the General Counsel will on July 15 of each year issue an AID General Notice initiating the Supplementary Confidential Statement submission cycle.

f. Obligated Employee Lists. As an aid in identifying obligated employees, M/PM/RP will, upon receipt of the July 15 AID General Notice each year, provide to each Designated Officer an alphabetical list and an organizational list of employees whose incumbency in a Civil Service position or whose personal Foreign Service rank subjects them to the reporting obligations.

See also Major Functional Series 400, Interim Update #9, Financial Disclosure Alert for Senior Employees.

****END OF SECTION****

2E. Employee Responsibility

It is the responsibility of each employee to bring to the attention of a Deputy Counselor any actual or potential conflict of interest relative to employment with AID. To assist employees in making a determination as to whether a conflict exists, on January 15 of each year GC/EPA shall issue an AID General Notice advising employees of their responsibilities under this Chapter.

****END OF SECTION****

2F. Policy and Authorities Regarding Conflicts of Interest for Former Employees

See also, Interim Update Dataset: Major Functional Series 400, Interim Update #12, Ethics Rules on Seeking Employment and Post-Employment Restrictions.

1. Statutory Provision. Section 207 of Title 18, United States Code, as amended by the Ethics in Government Act of 1978, as amended, is set out at Att. 2K.

2. Government-wide Regulations The regulations issued by OPM on post employment conflicts of interest are set forth at Att. 2L. In addition, a summary prepared by the Office of Government Ethics is at Att. 2M.

3. "Senior Employee" Designations

a. Executive Level employees, i.e., Administrator, Deputy Administrator and Assistant Administrators, Chiefs of Mission Classes II, III and IV are Senior Employees under the Ethics in Government Act of 1978.

b. All other Senior Employee positions must be "designated" as Senior Employees by 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 SES or SFS. The designations are made annually and the Agency's ethics officials shall provide adequate notice of the designations to the affected employees.

4. Administrative Enforcement Procedures of Post-employment Restrictions. For text see Att. 2N.

****END OF SECTION****

ATTACHMENT 2A

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any Person In Government Service Should:

Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

Uphold the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion.

Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

Seek to find and employ more efficient and economical ways of getting tasks accomplished.

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

Expose corruption wherever discovered.

Uphold these principles, ever conscious that public office is a public trust.

****END OF SECTION****

18 U.S.C., Sections 203, 205, and 208

"Sec. 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

"(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself for another"(1) at a time when he is a Member of Congress, Member of Congress

Elect, Resident Commissioner, or Resident Commissioner Elect; or

"(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

"(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee shall be fined not more than \$10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

"(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: Provided, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

****END OF SECTION****

"Sec. 205. Activities of officers and employees in claims against and other matters affecting the Government

"Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties"(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

"(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

"A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: Provided, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

"Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

"Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through

decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

"Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

"Such certification shall be published in the Federal Register.

"Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

****END OF SECTION****

"Sec. 208. Acts affecting a personal financial interest

"(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

"(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of

the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

****END OF SECTION****

ATTACHMENT 2C

620 EMPLOYEE RESPONSIBILITIES AND CONDUCT

620.1 Applicability (TL:PER-465 6-19-78) (Uniform State/AID/USIA) These regulations on employee responsibilities and conduct apply to all employees of the three agencies. Subparts A, B, and D apply to employees of other U.S. Government agencies detailed to one of the three agencies.

620.2 Legal Basis These regulations are issued under Executive Order 11222 of May 8, 1965, as amended, and part 735 of title 5, Code of Federal Regulations. End Uniform State/AID/USIA Regulations.

22 Code of Federal Regulations

PART 10-EMPLOYEE RESPONSIBILITIES AND CONDUCT

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AUTHORITY: EO 11222 of May 8, 1965, as amended; 5 CFR 735.104.

SOURCE: 43 FR 18976, May 2, 1978, unless otherwise noted.

****END OF SECTION****

Subpart A-General Provisions

Sec. 10.735-101 Purpose.

The maintenance of the highest standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts the regulations in this part prescribe standards of conduct and responsibilities for employees and special Government employees and require statements reporting employment and financial interests.

NOTE-These regulations are codified in State 3 FAM 620, AID Handbook 24, and ICA MOA V-A 550.

Sec. 10.735-102 Definitions.

(a) "Agency" means the Department of State (State), the Agency for International Development (AID), and the International Communication Agency (ICA).

(b) "Employee" means an officer or employee at home or abroad, of an agency named in paragraph (a) of this section, but does not include a special Government employee or a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, or Public Health Service.

(c) "Executive order" means Executive Order 11222 of May 8, 1965, as amended.

(d) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(e) "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 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(f) "Member of an employee's family" means a spouse, minor child, or other member of an employee's immediate household. For the purpose of these regulations "member of an employee's immediate or in-law household" means those blood relations who are residents of the employee's household.

(g) "Counselor" means the agency's Counselor on Ethical Conduct and Conflicts of Interest.

Sec. 10.735-103 Interpretation and advisory service.

(a) Counseling services on employee responsibilities and conduct are available in each agency. These services are to be coordinated by a Counselor appointed by the agency head. The Counselors are for State: The Legal Adviser; for AID: The Deputy General Counsel; and for ICA: The General Counsel. The Counselor serves as the agency's designee to the Civil Service

Commission on matters covered by the regulations in this part and is responsible for coordination of the agency's counseling services under paragraph (b) of this section and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by these sections are available to deputy counselors designated under paragraph (b) of this section.

(b) Each agency head may designate deputy counselors for the agency's employees and special Government employees. Deputy Counselors designated under this section must be qualified and in a position to give authoritative advice and guidance to each employee and special Government employee who seeks advice and guidance on questions of conflicts of interest and on other matters covered by the regulations in this part. A Washington employee or special Government employee should address any inquiries concerning the regulations in this part to the Counselor. At missions abroad the chief of each agency's establishment designates an officer, preferably the legal officer where one is available, to provide counseling services under the guidance of the Counselor; a single officer may serve all agencies. An employee or special Government employee serving abroad should submit inquiries to the officer designated.

(c) Each agency shall periodically notify its employees and special Government employees of the availability of counseling services and how and when these services are available. A new employee or special Government employee shall be notified at the time of entrance on duty.

Sec. 10.735-104 Applicability to detailed employees.

All the regulations of Subparts A, B, and D of this part are applicable to an employee of another U.S. Government agency who may be serving on detail or assignment, formally or informally, on a reimbursable or nonreimbursable basis through a Participating Agency Service Agreement or otherwise, with an agency named in Sec. 10.735-102(a). However, disciplinary action shall be taken against such an employee only by the employing agency.

Sec. 10.735-105 Disciplinary action.

A violation of the regulations in this part by an employee or special Government employee may be cause for appropriate disciplinary action, including separation for cause, which may be in addition to any penalty prescribed by law.

****END OF SECTION****

Subpart B-Ethical and Other Conduct and Responsibilities of Employees

Sec. 10.735-201 General.

(a) Proscribed actions. An employee shall avoid any action, whether or not specifically prohibited by the regulations in this part, which might result in, or create the appearance of:

- (1) Using public office for private gain;
- (2) Giving preferential treatment to any person;
- (3) Impeding Government efficiency or economy;
- (4) Losing independence or impartiality;
- (5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

(b) Applicability to members of families of employees. A U.S. citizen employee shall take care that certain responsibilities placed on the employee are also observed by members of the employee's family. These are the restrictions in regard to: Acceptance of gifts (Sec. 10.735-202 and 10.735-203); economic and financial activities abroad (Sec. 10.735-206); teaching, lecturing, and writing (Sec. 10.735-204(c)); participation in activities of private organizations (Sec. 10.735-211(c)); and political activities abroad (Sec. 10.735-211(g)).

Sec. 10.735-202 Gifts, entertainment, and favors.

(a) Acceptance prohibited. Except as provided in paragraphs (b), (c), and (d) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the employee's agency;

(2) Conducts operations or activities that are regulated by the employee's agency;

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty; or

(4) Appears to be offering the gift with the hope or expectation of obtaining advantage or preferment in dealing with the U.S. Government for any purpose.

(b) Acceptance permitted. The provisions of paragraph (a) of this section do not apply to:

(1) Gifts, gratuities, favors, entertainments, loans, or any other thing of monetary value received on account of close family or personal relationships when the circumstances make it clear that it is that relationship rather than the business of the persons concerned which is the motivating factor;

(2) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans;

(3) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value;

(4) Acceptance of rates and discounts offered to employees as a class.

(c) Acceptance permitted for State and ICA employees. For State and ICA employees the provisions of paragraph (a) of this section do not apply to: Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance.

(d) Acceptance permitted for AID employees. For AID employees the provisions of paragraph (a) of this section do not apply in the following situations:

(1) Acceptance of food, refreshments, or entertainment of nominal value on infrequent occasions offered in the ordinary course of luncheons, dinners, or other meetings and gatherings hosted by foreign governments or agencies and officials thereof, embassies, and international organizations, where the primary purpose of the function is representational or social, rather than the transaction of business. Where the primary purpose of the function is the transaction of business, acceptance is not permitted, except if there is justification and reporting in accordance with paragraph (d)(4) of this section.

(2) Participation in widely attended lunches, dinners, and similar gatherings sponsored by industrial, technical, and professional associations for the discussion of matters of mutual interest to Government and industry.

(3) Acceptance of food, refreshments, or entertainment in the unusual situation where the employee, by virtue of the location of the person, firm, corporation, or other entity, or the regulations governing its dining facilities, finds it inconvenient or impracticable not to accept the offer. Each case of acceptance shall be reported in accordance with the requirement of paragraph (d)(4) of this section. In no other case shall employees accept food, refreshments, or

entertainment from private corporations, entities, firms, or individual contractors at occasions which are other than widely attended functions whose purposes are unrelated to Agency business.

(4) In exceptional circumstances where acceptance of food, refreshments, or entertainment is not authorized by paragraphs (d)(1), (2), and (3) of this section, but where, in the judgment of the individual concerned, the Government's interest would be served by such acceptance directly or indirectly from any foreign government, agency, or official thereof or a private person, firm, corporation, or other entity which is engaged in business transactions of any sort with AID, an employee may accept the offer: Provided, That a report of the circumstances, together with the employee's statement as to how the Government's interests were served, will be made within 48 hours to the employee's supervisor, or, if the employee is serving abroad, or on temporary duty abroad, to the Mission Director.

(e) Gifts to superiors. An employee shall for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than the employee (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(f) Neither this section nor Sec. 10.735-204 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on the employee's behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967.

Sec. 10.735-203 Gifts from foreign governments.

An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342, and the regulations promulgated thereunder

pursuant to E.O. 11320, 31 FR 15789. These regulations re set forth in Part 3 of this title (as added, 32 FR 6569, Apr. 1967), and in 3 FAM 621.

Sec. 10.735-204 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of Government employment. Incompatible activities include but are limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; of

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform Government duties and responsibilities in an acceptance manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for the employee's services to the Government (18 U.S.C. 209).

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, this part, or the agency regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that is dependent on information obtained as a result of Government employment, except when that information has been made available to the general public or will be made available on request or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the Executive order shall not receive compensation or anything monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the employee's agency, or which draws substantially on official data or ideas which have not become part of the body of public information. Employees are referred to the detailed rules of their agency with respect to clearance and acceptance of compensation (3 FAM 628; for AID see Handbook 18).

(d) [Reserved]

(e) An employee shall not render any services, whether or not compensated, to any foreign government, state, province, or semigovernmental agency, or municipality of any foreign government, or to any international organization of states. However, this shall not prevent the rendering of such services by employees acting on behalf of the United States. Nor shall this provision prevent the rendering of services to an international organization of states when otherwise consistent with law and when authorized by the appropriate officer. The appropriate officer for State is the Director General and Director of Personnel; for AID the Assistant Administrator for Program and Management Services; and for ICA the Director of Personnel Services.

(f) [Reserved]

(g) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law.

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

Sec. 10.735-205 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially with the employee's Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law or the regulations in this part.

(c) Pursuant to the provision of 18 U.S.C. 208(b) the following described financial interests of an employee are hereby exempted from the requirements of 18 U.S.C. 208(b)(1) as being too remote or too inconsequential to affect the integrity of the services of an employee. The exemption applies to the financial interests held directly by an employee, by the employee's spouse or minor child whether individually or jointly with the employee, or by an employee and any partner or partners as joint assets of the partnership:

(1) Investments in State and local government bonds; and stocks, bonds, or policies in a mutual fund, investment company, bank or insurance company, provided that in the case of a mutual fund, investment company, or bank, the fair value of such stock or bond holding does not exceed one percent of the value of the reported assets of the mutual fund, investment company, or bank. In the case of a mutual fund or investment company, this exemption applies only where the assets of the fund or company are diversified; it does not apply where the fund or company specializes in a particular industry or commodity.

(2) Interest in an investment club or other group organized for the purpose of investing in equity or debt securities: Provided, That the fair value of the interest involved does not exceed \$10,000 and that the interest does not exceed one-fourth of the total assets of the investment club or group. Where an employee covered by this exemption is a member of a group organized for the purpose of investing in equity or debt securities, the interest of the employee in any enterprise in which the group holds securities shall be based upon the employee's equity share of the holdings of the group in that enterprise.

(3) If an employee, or the employee's spouse or minor child has a present beneficial interest or a vested remainder interest under a trust, the ownership of stocks, bonds, or other corporate securities under the trust will be exempt to the same extent as provided in paragraphs (c)(1) and (2) of this section for the direct ownership of such securities. The ownership of bonds other than corporate bonds, or of shares in a mutual fund or regulated investment company, under the trust will be equally exempt and to the same extent as under paragraphs (c)(1) and (2) of this section.

(4) If an employee is an officer, director, trustee, or employee of an educational institution, or if the employee is negotiating for, or has an

arrangement concerning prospective employment with such an institution, a direct financial interest which the institution has in any matter will not itself be exempt, but any financial interest that the institution may have in the matter through its holdings of securities issued by business entities will be exempt: Provided, The employee is not serving as a member of the investment committee of the institution or is not otherwise advising it on its investment portfolio.

(5) An employee may continue to participate in a bona fide pension, retirement, group life, health or accident insurance plan, or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed. Such financial interest in that organization will be exempt, except to the extent that the welfare or benefit plan is a profit-sharing or stock-bonus plan and the employee's financial interest there under exceeds \$10,000. This exemption extends also to any financial interests that the organization may have in other business activities.

(d) Nothing in this part shall be deemed to prohibit an employee from acting, with or without compensation, as agent or attorney for the employee's parents, spouse, child, or any person for whom, or for any estate for which, the employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which the employee has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of the employee's official responsibility, as defined in 18 U.S.C. 202(b): Provided, The head of the employee's division approves in writing.

Sec. 10.735-206 Economic and financial activities of employees abroad.

(a) Prohibitions in any foreign country. A U.S. citizen employee abroad is specifically prohibited from engaging in the activities listed below in any foreign country.

(1) Speculation in currency exchange.

(2) Transactions at exchange rates differing from local legally available rates, unless such transactions are duly authorized in advance by the agency.

(3) Sales to unauthorized persons (whether at cost or for profit) of currency acquired at preferential rates through diplomatic or other restricted arrangements.

(4) Transactions which entail the use, without official sanction, of the diplomatic pouch.

(5) Transfers of funds on behalf of blocked nationals, or otherwise in violation of U.S. foreign funds and assets control.

(6) Independent and unsanctioned private transactions which involve an employee as an individual in violation of applicable control regulations of foreign governments.

(7) Acting as a intermediary in the transfer of private funds from persons in one country to persons in another country, including the United States.

(8) Permitting use of one's official title in any private business transactions or in advertisements for business purposes.

(b) Prohibitions in country of assignment.

(1) A U.S. citizen employee shall not transact or be interested in any business or engage for profit in any profession or undertake other gainful employment in any country or countries to which he employee is assigned or detailed in the employee's own name or through the agency of any other person; exceptions may be made with respect to chiefs of mission only in writing by the Deputy Under Secretary for Management and for all other State employees by the appropriate chief of mission; for AID employees by the assistant administrator of the regional bureau or head of the nonregional organization, as appropriate; and for ICA employees by the Director of Personnel Services, or their designees (see 22 U.S.C. 805).

(2) A U.S. citizen employee shall not invest in real estate or mortgages on properties located in the employee's country of assignment. The purchase of a house and land for personal occupancy is not considered a violation of this paragraph.

(3) A U.S. citizen employee shall not invest money in bonds, shares or stocks of commercial concerns head-quartered in the country of assignment or

conducting a substantial portion of their business in such country. Such investments, if made prior to knowledge of assignment or detail to such country or countries, may be retained during such assignment or detail when approved in writing by the appropriate official named in paragraph (b)(1) of this section. If retention is authorized, such stocks, shares, or bonds may not be sold while the employee is assigned or detailed to the country or countries, unless the agency approved the sale in writing.

(4) A U.S. citizen employee shall not sell or dispose of personal property, including automobiles, at prices producing profits to the employee which result primarily from import privileges derived from the employee's official status as an employee of the U.S. Government. Employees of State and ICA are referred to Foreign Affairs Manual Circular 378; for AID see Handbook 23, Attachment 1B.

(c) Acceptance of employment by members of family abroad. Family members of Foreign Service personnel may accept gainful employment in a foreign country unless such employment

(1) would violate any law of such country or of the U.S.; or

(2) could damage the interests of the U.S., as certified in writing to the family member by the Chief of the U.S. Diplomatic Mission in such country. A copy of such certification will be sent to the Family Liaison Office (M/FLO), Department of State. Family members accepting employment abroad should bear in mind that they may not enjoy immunity from judicial process and would be subject to the payment to taxes derived from their nondiplomatic employment.

(d) Business activities of non-U.S. citizen employees. A non-U.S. citizen employee abroad may engage in outside business activities with the prior approval of the head of the overseas establishment on the basis of the standards expressed in Sec. 10.735-204(a).

Sec. 10.735-207 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other properly entrusted or issued to the employee.

Sec. 10.735-208 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in Sec. 10.735-204(c) directly or indirectly use, or allow the use of, official information obtained through or in connection with Government employment which has not been made available to the general public.

Sec. 10.735-209 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court or one imposed by law such as Federal, State, or local taxes, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as the employer. In the event of dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt.

Sec. 10.735-210 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

- (a) Necessitated by an employee's law enforcement duties; or
- (b) Under section 3 of Executive Order 10927 and similar agency-approved activities.

Sec. 10.735-211 Activities relating to private organizations and politics.

(a) Definition. For the purpose of this section, the term "private organization" denotes any group of persons or associations organized for any purpose whatever, except an organization established by the Government of the United States, or officially participated in by State, AID, or ICA.

(b) Participation in activities of employee organizations. An employee may join or refrain from joining employee organizations or

associations without interference, coercion, restraint, or fear of discrimination or reprisal.

(c) Participation in activities or private organizations. In participating in the program and activities of any private organization, an employee shall make clear that the employee's agency has no official connection with such organization and does not necessarily sponsor or sanction the viewpoints which it may express.

(d) Legal restrictions on membership in certain organizations. An employee shall not have membership in any organization that advocates the overthrow of our constitutional form of Government in the United States, knowing that such organization so advocates (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) Private organizations concerned with foreign policy or other matters of concern to agencies.

(1) Limitation on participation. When a private organization is concerned primarily with foreign policy or international relations or other matters of concern to an employee's agency, an employee shall limit connection therewith as follows: Unless specifically permitted to do so, the employee may not serve as advisor, officer, director, teacher, sponsor, committee chairman, or in any other official capacity or permit the employee's name to be used on a letterhead, in a publication, in an announcement or news story, or at a public meeting, regardless of whether the employee's official title or connection is mentioned. The provisions of this section are not intended to prohibit the normal and active participation of an employee in professional organizations such as the American Political Science Association, the American Economic Association, the American Foreign Service Association, and similar organizations, since such participation is in the interest of both the employee and the Government. Employees are expected, however, to exercise discretion in such activities and are held personally accountable for any improper use of their relationship with State, AID, and ICA.

(2) Request for special permission. Special permission to assume or continue a connection prohibited by paragraph (e)(1) of this section may be granted in cases where the public interest will not be adversely affected. To request such permission, or to determine whether the provisions are applicable to a particular case, the employee shall address a memorandum setting forth all of the circumstances to the appropriate officer. The appropriate

officer is for State, the Director General and Director of Personnel; for AID, the Senior Personnel Officer under whose jurisdiction the employee serves; and for ICA, the Director of Personnel Services.

(3) Application to senior officers. Because of the prominence resulting from their official positions, chiefs of mission and other senior officers should recognize the particular bearing of the provisions of paragraph (e)(1) of this section upon their activities. They should restrict association with any organizations involving foreign nations and the United States to simple membership and should not accept even honorary office in such organizations except with the specific prior approval as provided in paragraph (e)(2) of this section.

(f) Private organizations not concerned with foreign policy. When the purpose and program of the organization do not fall primarily within the field of foreign policy or international relations, the employee's activity is limited only to the following extent:

(1) The employee's official title or connection may be used to identify the employee, as in a civic association election, but may not be used on a letterhead, in a publication, or otherwise so as to employ the prestige of the U.S. Government to enhance that of the organization or to imply official sponsorship.

(2) When the employee is a representative of an association consisting of State, AID, or ICA employees, or of a group of such employees, the employee's connection with the agency may be freely used so long as there is no implication of official sponsorship beyond that which may have been officially approved.

(g) Political activities abroad. A U.S. citizen employee shall not engage in any form of political activity in any foreign country.

(h) Activities relating to U.S. politics. The law (5 U.S.C. 7324, formerly the Hatch Act) provides in summary that it is unlawful for any Federal employee of the executive branch to use the employee's official authority or influence for the purpose of interfering with an election or affecting the result thereof, or to take any active part in political management or in political campaigns. These restrictions do not in any way affect the right of a Federal employee

(1) to vote as the employee chooses;

(2) to express personal political opinions, except as part of a campaign;

(3) to make or refrain from making contributions to political organizations, provided contributions are not made in a Federal building or to another Federal officer or employee (see 18 U.S.C. 602, 603, 607, and 608);

(4) to participate in local, nonpartisan activities.

Sec. 10.735-212 Wearing of uniforms.

(a) An employee of the Foreign Service may not wear any uniform except as may be authorized by law or as a military commander may require civilians to wear in a theater of military operations (22 U.S.C. 803). When an employee is authorized by law or required by a military commander of the United States to wear a uniform, care shall be taken that the uniform is worn only at authorized times and for authorized purposes.

(b) Conventional attire worn by chauffeurs, elevator operators, and other miscellaneous employees are not considered uniforms within the meaning of this section except that, for ICA, MOA VII 917.2b prohibits the purchase from Agency funds of uniforms or any item of personal wearing apparel other than special protective clothing.

Sec. 10.735-213 Recommendations for employment.

(a) Making recommendations in official capacity. In general, an employee shall not, in the employee's official capacity, make any recommendations in connection with the employment of persons unless the position concerned are with the Government of the United States and the recommendations are made in response to an inquiry from a Government official authorized to employ persons or to investigate applicants for employment. A principal officer in answer to a letter of inquiry from outside the U.S. Government concerning a former employee assigned to the post, may state the length of time the person was employed at the post and the fact that the former employee performed duties in a satisfactory manner, if such is the case. Also, an AID Mission Director may provide names of persons or firms from which a cooperating government may select an employee or firm to be used in some phase of the AID program.

(b) Making personal recommendations. An employee may make a personal recommendation in connection with the employment of any person, including present or former employees, their spouses and/or members of their families,

except for employment in a position of trust or profit under the government of the country to which the employee is accredited or assigned (22 U.S.C. 806(b)): Provided, That the employee does not divulge any information concerning the person derived from official sources. When a letter of introduction or recommendation is written by an employee, precautionary measures would be taken to prevent its being construed as official correspondence and used by an unscrupulous individual to impress American or foreign officials. Accordingly, official stationery should not be used for this purpose. The letter may, however, show the recommending employee's status as an employee of the U.S. Government. Every personal letter of recommendation shall contain a statement clearly indicating that the letter constitutes a personal recommendation and is not to be construed as an official recommendation by the Government of the United States.

Sec. 10.735-214 Transmitting communications and gifts.

(a) Correspondence. In corresponding with anyone other than the proper official of the United States with regard to the public affairs of a foreign government, an employee shall use discretion and judgment to ensure that neither the United States nor the employee will be embarrassed or placed in a compromising position (22 U.S.C. 806(a)).

(b) Communications. An employee shall not act as an agent for the transmission of communications from private persons or organizations in foreign countries to the President or to Federal, State, or municipal officials in the United States. A chief of mission may, however, accept communications of this nature and forward them to the Department of State for such further action as may be appropriate, whenever the chief of mission determines it to be clearly in the public interest to do so.

(c) Gifts. An employee shall not act as an agent for the transmission of gifts from persons or organizations in foreign countries to the President or to Federal, State, or municipal officials of the United States. However, principal officers may, according to regulations prescribed by the President, accept, and forward to the Office of Protocol of the Department of State, gifts made to the United States or to any political subdivision thereof by the Government to which they are accredited or from which they hold exequaturs. Employees shall not, without the approval of the Secretary of State, transmit gifts from persons or organizations in the United States to heads or other officials of foreign states.

Sec. 10.735-215 General conduct prejudicial to the Government.

(a) An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(b) An employee abroad is also obligated to obey the laws of the country in which the employee is present.

(c) An employee shall observe the requirements of courtesy, consideration, and promptness in dealing with or serving the public.

Sec. 10.735-216 Miscellaneous statutory provisions.

Each employee shall become acquainted with each statute that relates to the employee's ethical and other conduct as an agency employee of and of the Government.

(a) The attention of employees is directed to the following statutory provisions:

(1) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service."

(2) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(3) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(4) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(5) The prohibitions against

(i) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and

(ii) the disclosure of confidential information (18 U.S.C. 1905).

(6) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(7) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(8) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(9) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(10) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(11) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(12) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(13) The prohibition against

(i) embezzlement of Government money or property (18 U.S.C. 641);

(ii) failing to account for public money (18 U.S.C. 643); and

(iii) embezzlement of the money or property of another person in the possession of an employee by reason of the employee's employment (18 U.S.C. 654).

(14) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(15) The prohibition against political activities in Subchapter III of Chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(16) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(17) The prohibition against discrimination because of politics, race, religion, or color (22 U.S.C. 807).

(18) The prohibition against officers or employees accepting any honorarium in excess of \$2,000 or honoraria aggregating more than \$25,000 in any calendar year (sec. 112, Pub. L. 94-283, 90 Stat. 494 (2 U.S.C. 441i)).

(b) The attention of consular officers is directed to the following statutory provisions:

(1) The provisions relating to the duty to account for fees received (22 U.S.C. secs. 9, 812, 1194), liability for exaction of excessive fees (22 U.S.C. secs. 1182, 1189), and liability for failure to collect proper fees (22 U.S.C. 1190).

(2) The provisions relating to liability for failure to give bond and for embezzlement (22 U.S.C. 1179), liability for embezzlement of fees or effects of American citizens (22 U.S.C. 1198), and liability for falsely certifying as to the ownership of property (22 U.S.C. 1200).

(3) The prohibition against profiting from dealings with discharged seamen (22 U.S.C. 1187).

(4) The provision relating to liability for failure to collect the wages of discharged seamen (46 U.S.C. 683).

Sec. 10.735-217 Requesting exceptions from certain statutory prohibitions.

(a) Any employee desiring a written advance determination that the prohibitions of 18 U.S.C. 208(a) do not apply will prepare a written request addressed to an appropriate agency official. For purposes of this section, the appropriate agency official is: The Deputy Under Secretary for Management for State, the Administrator for AID, and the Director for ICA. The request will describe the particular matter giving rise to the conflict of interest, the nature and extent of the employee's anticipated participation in the particular matter, and the exact nature and amount of the financial interest related to the particular matter.

(b) The employee will forward the request to the appropriate agency official through the immediate supervisor and the assistant agency head in charge of the organizational agency component to which the employee is assigned, or will be assigned in the case of a new employee. The assistant agency head will forward the written request to the appropriate agency official through the agency's Counselor. The Counselor shall attach a

written opinion to the request, prepare a recommended written determination in final form for signature by the appropriate agency official, and shall forward all documents to that official.

(c) The determination of the appropriate agency official will be sent to the employee by the Counselor. If the appropriate agency official grants the requested exception, the original written advance determination will be sent to the employee. A duplicate original shall be retained among the appropriate agency records under the control of the Counselor.

****END OF SECTION****

Subpart C-Ethical and Other Conduct and Responsibilities of Special Government Employees

Sec. 10.735-301 Conflicts of interest.

Special Government employees are subject to the conflicts of interest statutes (18 U.S.C. 202). An explanation of these conflicts of interest statutes their effects upon special Government employees and guidelines for obtaining and utilizing the services of special Government employees are in Appendix C of Chapter 735 of the Federal Personnel Manual. A special Government employee shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with Government duties and responsibilities.

Sec. 10.735-302 Use of Government employment.

A special Government employee shall not use Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for the employee or another person, particularly one with whom the employee has family, business, or financial ties.

Sec. 10.735-303 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of Government employment for private gain for the employee or another person either by direct action on the employee's part or by counsel, recommendation, or suggestion to another person, particularly one with whom the employee has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) A special Government employee may engage in teaching, lecturing, or writing that is not prohibited by law, Executive Order 11222 or the restrictions in this part; however, a special Government employee shall not, either for or without compensation, engage in teaching, lecturing, or writing that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available, or when the head of the agency gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. A special Government employee who wishes to request the agency head to authorize the use of nonpublic information should submit such request through the Counselor. The request should contain complete information concerning the nonpublic information which the employee wishes to disclose and should contain in addition an indication of the intended use of such information and how disclosure of it would be in the public interest.

Sec. 10.735-304 Coercion.

A special Government employee shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to the employee or another person, particularly one with whom the employee has family, business, or financial ties.

Sec. 10.735-305 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with Government employment, shall not receive or solicit from a person having business with the employee's agency anything of value as a gift, gratuity, loan, entertainment, or favor for the employee or another person, particularly one with whom the employee has family, business or financial ties.

(b) The exceptions to the prohibition against the acceptance of gifts which have been granted to employees in Sec. 10.735-202(b), (c), and (d) are also applicable to special Government employees.

(c) A special Government employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342, and the regulations promulgated there under pursuant to E.O. 11320; 31 FR 15789. These regulations are set forth in Part 3 of this title (as added, 32 FR 6569, April 18, 1967), and in 3 FAM 621.

(d) A special Government employee shall avoid any action, whether or not specifically prohibited by these sections on special Government employees, which might result in, or create the appearance of:

- (1) Using public office for private gain;
- (2) Giving preferential treatment to any person;
- (3) Impeding Government efficiency or economy;
- (4) Losing independence or impartiality;
- (5) Making a Government decision outside official channels;
or
- (6) Affecting adversely the confidence of the public in the integrity of the Government.

Sec. 10.735-306 Miscellaneous statutory provisions.

Each special Government employee shall become acquainted with each statute that relates to the employee's ethical and other conduct as a special Government employee of an agency and of the Government. The attention of special Government employees is directed to the statutes listed in Sec. 10.735-216.

****END OF SECTION****

Subpart D-Statements of Employment and Financial Interests

Sec. 10.735-401 Employees required to submit statements.

The following employees of State, AID, and ICA shall submit statements of employment and financial interests:

(a) All special Government employees including experts or consultants serving on a full-time or intermittent basis, except when waived under Sec. 10.735-402(c).

(b) Employees paid at a level of the Executive Schedule in Subchapter II of Chapter 53 of Title 5, United States Code, except as provided in Sec. 10.735-402(b).

(c) Except as provided in Sec. 10.735-402, employees classified at GS-13, FSO-4, FSR-5, FSS-2, AD-13, FC-5, or above, who are in positions hereby identified either as positions the basic duties of which impose upon the incumbent the responsibility for a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-Federal enterprise;

(4) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise, or as positions which have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflict of interest situation and carry out the purpose of law, Executive order, and the agency's regulations:

STATE

Director General of the Foreign Service and the Director of Personnel; Director of the Policy Planning Staff; Inspector General; Director, FSI; Special Assistant to Secretary; Deputy Secretary, Under Secretaries, or Deputy Under Secretary; Deputy Assistant Secretary and others at this level or above; Assistant Legal Adviser for Management; Director, Office of Operations; Office Director; Country

Director; Division Chief in Bureau of Economic and Business Affairs, in the Office of Operations, (O/OPR), or in the Office of Foreign Buildings; Executive Director; Deputy Chief of Mission; Principal Officer; Economic Counselor; commercial Counselor; Administrative Counselor; civil Air Attache; Petroleum Officer; Minerals Officer; contracting Specialist; Procurement Specialist; Despatch Agent; Traffic Manager; and Traffic Management Specialist.

ICA

Deputy Director, Associate Directors, Directors and Deputy Directors of Offices or Services, Executive or Special Assistants to the director; Chief Inspector; Associate Chief Inspector; Commissioner General, Deputy Commissioner General, Staff Director (Advisory Commission), Director of Engineering and Technical Operations; Director of Audio-Visual Procurement and Production; Country Public Affairs Officer, Deputy Country Public Affairs Officer, Public Affairs Counselor, Deputy Public Affairs Counselor, Director or Manager of Regional Service Center, Radio Relay Station, Radio Program Center or Radio Relay Station Construction Site, Administrative Officer or Executive Officer at a post abroad, Administrative Officer, Executive Officer and Business Manager (occupational codes 301, 340, 341, and 110, or FAS code 200); Contracting Specialist and Procurement Specialist (occupational code 1102, or FAS codes 210 and 211); Auditor and Accountant (occupational code 510, or FAS code 207); General Counsel, Deputy General Counsel, or Attorney (occupational code 905, or FAS code 512).

AID

(1) AID/W: Deputy Assistant Administrators, Associate Assistant Administrators, Deputy Associate Assistant Administrators; Heads and Deputy Heads of Offices, Staffs, and Divisions; Desk Officers and Deputy Desk Officers.

(2) Overseas: Mission Directors, Deputy Directors, Assistant Directors, AID Representatives, Aid Affairs Officers, Chairman, Development Assistance committee; U.S. Representative to Development Assistance Committee; Development coordination Officer.

(3) Any person serving as chief of an operational branch responsible for housing, loans, guarantees, or other commercial type transactions with the public.

(4) In addition, employees in AID/W or overseas whose positions fall within the following series or position titles (occupational code given in parenthesis): Economist Series (0110); International Cooperation Series (0136); Auditor General (0301.21); Supervisory Housing Development Officer (0301.31); Chief, Housing and Urban Development (0301.35); Contract Compliance Specialist (0301.48); Director for Regional Activities (0340.08); Development Officer (0340.09); Regional Development Officer (0340.10); Executive Officer (0341.01); Deputy Executive Officer (0341.02); Regional Executive Officer (0341.03); Administrative Officer (0341.05); Executive Officer-Administrative Support (0341.15); Executive Officer, Operations (0341.16); Executive Officer, Real Property (0341.18); Executive Officer, Personnel (0341.19); General Services Officer (0342.01); Assistant General Services Officer (0342.03); Assistant General Services Officer, Property and Supply (0342.20); Assistant General Services Officer, Procurement (0342.23); Assistant General Services Officer, Housing (0342.25); Program Officer (0345.01); Deputy Program Officer (0345.02); Food and Agriculture Officer (0401.01); Deputy Food and Agriculture Officer (0401.02); Budget and Accounting Series (0504); Financial Management Series (0505); Accounting Series (0510); Budget Administration Series (0560); General Attorney Series (0905); General Business and Industry Series (1101); Contract and Procurement Series (1102); Property Disposal Series (1104); Purchasing Series (1105); Trade Specialist Series (1140); Private Resources Development Series (1150); Financial Analysis Series (1160); General Investigating Series (1810); Criminal Investigating Series (1811); Import Specialist Series (1889); General Supply Series (2001); Supply Program Management Series (2003).

Sec. 10.735-402 Employees not required to submit statements.

(a) Employees in positions that meet the criteria in paragraph (c) of Sec. 10.735-401 may be excluded from the reporting requirement when the agency head or designee determines that:

(1) The duties of the position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(2) The duties of the position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over incumbent or the inconsequential effect on the integrity of the Government.

(b) A statement of employment and financial interests is not required by the regulations in this part from an agency head, or a full-time member of a committee, board, or commission appointed by the President. These employees are subject to separate reporting requirements under section 401 of Executive Order 11222.

(c) Special Government employees not required to submit statement. An agency head may waive the requirement of this section for the submission of a statement of employment and financial interest in the case of a special Government employee who is not a consultant or an expert when the agency finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual, but do not include a physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients.

Sec. 10.735-403 Employee's complaint on filing requirement.

Each employee shall have the opportunity for review through agency grievance procedure of the employee's complaint that the employee's position has been improperly included within Sec. 10.735-401 as one requiring the submission of a statement of employment and financial interests. Employees are reminded that they may obtain counseling pursuant to Sec. 10.735-103 prior to filing a complaint.

Sec. 10.735-404 Time and place of submission, and forms.

(a) An employee or special Government employee shall submit a statement to the Counselor (in the case of a State employee, through the employee's Bureau) no later than:

(1) Ninety days after the effective date of this part if the employee has entered on duty on or before that effective date;
or

(2) At least 10 days prior to entrance on duty, if the employee enters on duty after that effective date; except that an employee or special Government employee who enters on duty within 90 days of the effective

date of this part may submit such statement within 90 days after entrance on duty.

(b) Only the original of the statement or supplement thereto required by this part shall be submitted. The individual submitting a statement should retain a copy for the individual's own records.

Sec. 10.735-405 Information required.

(a) Employees. Employees' statement of employment and financial interests required by the regulations in this part shall be submitted on the form, "Confidential Statement of Employment and Financial Interests (for use by Government employees)", Form OF-106, and shall contain all the information therein required.

(b) Special Government employees. All special Government employees shall submit statements of employment and financial interest on the form, "Confidential Statement of Employment and Financial Interests (for use by Special Government Employees)", Form OF-107 for State and ICA, Form AID 4-450 for AID, and shall contain all the information therein required.

(c) Interests of employee's relatives. The interest of a member of an employee's family is considered to be an interest of the employee. The term "member of an employee's family is defined in Sec. 10.735-102(f).

(d) Information not known by employees. If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in the employee's behalf.

(e) Interests not required to be reported. An employee need not disclose those financial interests described in Sec. 10.735-205(c) as being too remote or too inconsequential to affect the integrity of employees' services.

(f) Information not required. The regulations in this part do not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this

section, educational and other institutions doing research and development or related work involving grants or money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

Sec. 10.735-406 Submission of position description.

Each Statement of Employment and Financial Interests or annual supplement thereto must be accompanied by a full description of the employee's principal governmental duties. The description should be particularly detailed in regard to those duties which might possibly be an element in a conflict of interest. If the statement indicates that the employee has no outside employment or financial interests, the employee need not submit a description of duties. For a special Government employee, the employing office shall submit the description.

Sec. 10.735-407 Supplementary statements.

(a) Employees, as defined in paragraphs (b) and (c) of Sec. 10.735-401, shall report changes in, or additions to, the information contained in their statements of employment and financial interests in supplementary statements as of June 30 each year. If no changes or additions occur, a negative report is required.

(b) All special Government employees, as defined in paragraph (a) of Sec. 10.735-401, shall submit a current statement at the time their appointments are extended. A supplementary report indicating any changes in, or additions to the information already submitted will be accepted in lieu of a full submission. If there are no changes or additions, a negative report is required. For AID, no action to extend an appointment, will be taken unless such supplementary report is submitted not later than 10 days prior to the expiration of said appointment.

(c) Notwithstanding the filing of reports required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of section 208 of Title 18, United States Code, or Subpart B of this part.

(d) An employee is also to keep current the employee's description of principal duties as to changes or additions which might possibly be an element in a conflict of interest. The employing office shall submit

descriptions of changes in the principal duties of a special Government employee as they occur.

Sec. 10.735-408 Review of statements and determination as to conflicts of interest.

(a) On the basis of the Statement of Employment and Financial Interests submitted by each employee or special Government employee, or on the basis of information received from other sources, the Counselor shall determine, in the light of the duties which that employee or special Government employee is or will be performing, whether any conflicts of interest, real or apparent, are indicated. The counselor shall make this determination based on the applicable statutes, the Executive order, and the applicable regulations of the Civil Service Commission, and of the agency.

(b) Where the Counselor's determination in a particular case is that a conflict of interest, real or apparent, is indicated, the Counselor shall initiate informal discussions with the employee or special Government employee concerned. These discussions shall have as their objectives:

(1) Providing the individual with a full opportunity to explain the conflict or appearance of conflict; and

(2) Arriving at an agreement (acceptable to the Counselor, the individual and the individual's immediate superior) whereby the conflict of interest may be removed or avoided. Such an agreement may include, but is not limited to:

(i) Changes in assigned duties;

(ii) divestiture of the financial or employment interest creating the conflict or apparent conflict; or

(iii) disqualification for a particular assignment.

(d) Written summaries of all agreements and decisions arrived at pursuant to paragraph (b) or (c) of this section shall be placed in the Counselor's files. Copies shall also be made available to the employee or special Government employee concerned.

Sec. 10.735-409 Confidentiality of employees' statements.

An agency shall hold each statement of employment and financial interests, and each supplementary statement, in confidence. To insure this confidentiality only the Counselor and Deputy Counselors are authorized to review and retain the statements. The Counselor and Deputy Counselors are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. An agency may not disclose information from a statement except as the Civil Service Commission or the agency head may determine for good cause shown.

Sec. 10.735-410 Effect of employees' statement on other requirements.

The statements of employment and financial interests and supplementary statements required for employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit the employee or any other person to participate in a matter in which the employee or any other person's participation is prohibited by law, order, or regulation. Save with respect to those financial interests excepted from the conflict of interest prohibitions of 18 U.S.C. 208(a) pursuant to a written advance determination under Sec. 10.735-217 or exempted by the provisions of Sec. 10.735-205(c), an employee must disqualify himself or herself from participating in any matter in which the employee has a financial interest.

Sec. 10.735-411 Disqualification procedures.

(a) Where an employee is prohibited from participating in a matter because of a conflicting financial interest that is not exempt under Sec. 10.735-205(c) or has not been specifically excepted by the appropriate agency official pursuant to Sec. 10.735-217 in advance of the employee's participation in the particular matter, the employee shall conduct himself or herself in accordance with the following provisions:

(1) The employee shall promptly disclose the financial interest in such matter to the employee's immediate superior. The superior will thereupon relieve the employee of duty and responsibility in the matter.

(2) In foreign posts, it may be impossible or highly impracticable for an employee, who has a disqualifying financial interest, to assign the matter for official action to anyone other than a subordinate. In this event, the employee must instruct the subordinate to report fully and directly to the immediate

superior to whom the employee himself or herself would normally report. The employee must concurrently direct such subordinate to take such action as may be appropriate in the matter, and without thereafter revealing to the disqualified employee in any way any aspect of the particular matter.

(b) Nothing herein precludes the employee from disposing of such disqualifying financial interest, thereby wholly eliminating the conflict of interest. In some circumstances, where the employee may be obtain an exception under Sec. 10.735-217, or may not disqualify himself or herself and refer to assign the matter to another employee, the performance of duty may even require divestiture.

(c) Where a supervisor has reason to believe that a subordinate employee may have a conflicting financial interest, the supervisor should discuss the matter with the employee. If the supervisor finds that a conflict of interest does exist, the supervisor must relived the subordinate employee of duty and responsibility in the particular matter.

(d) The obligation to avoid conflicts of interest is upon each employee. It is a continuing obligation calling for alert vigilance.

(e) Notwithstanding any other provision of this part to the contrary, if a employee's holdings rise in value above the amount exempted by Sec. 10.735-205(c), then the statutory and regulation prohibitions apply in a conflict of interest situation.

PART 11-APPOINTMENT OF FOREIGN SERVICE OFFICERS

Sec. 11.1 Eligibility for appointment as Foreign Service officer. 11.2 Written examination for appointment to class 7 or 8. 11.3 Oral examination for appointment to class 7 or 8. 11.4 Medical examination for appointment to class 7 or 8. 11.5 Certification for appointment to class 7 or 8. 11.6 Final review panel. 11.7 Termination of eligibility. 11.8 Travel expenses of candidates. 11.11 Lateral entry appointments of Foreign Service officers to classes 1 through 7.

AUTHORITY: Secs. 212, 302, 303, 516, 517, 60 Stat. 1001, as amended, 1002, 1008, as amended; 22 U.S.C. 827, 842, 843, 911, unless otherwise noted.

Sec. 11.1 Eligibility for appointment as Foreign Service officer.

(a) General considerations. Pursuant to Section 511 of the Foreign Service Act of 1946, as amended, all Foreign Service officers shall be appointed by the President, by and with the advice and consent of the Senate. All appointments shall be made to a class and not to a particular post. No person shall be eligible for appointment as a Foreign Service officer unless that person has demonstrated loyalty to the Government of the United States and attachment to the principles of the Constitution, is a citizen of the United States, and, if married, is married to a citizen of the United States. The religion, race, sex, marital status, or political affiliations of a candidate will not be considered in designations, examinations, or certifications.

(b) Veterans' preference. Notwithstanding the provisions of section 3320 of Title 5 of the United States Code, the fact that any applicant is a veteran or disabled veteran, as defined in Section 2108 (1) or (2) of such title, shall be taken into consideration as an affirmative factor in the selection of applicants for initial appointment, as Foreign Service officers or Foreign Service Information officers. (22 U.S.C. 1234).

****END OF SECTION****

ATTACHMENT 2D

22 Code of Federal Regulations

(These regulations are codified in 3 FAM 321,
Gifts and Decorations from Foreign Governments,
Unified State/IDCA/AID/USIA regulations.)

PART 3-GIFTS AND DECORATIONS FROM FOREIGN GOVERNMENTS

Sec. 3.1 Purpose. 3.2 Authority.

3.3 Definitions. 3.4 Restriction on acceptance of gifts and decorations. 3.5 Designation of officials and offices responsible for administration of foreign gifts and decorations.

3.6 Procedure to be followed by employees in depositing gifts of more than minimal value and reporting acceptance of travel or travel expenses.

3.7 Decorations. 3.8 Approval of retention of gifts or decorations with employing agency for official use. 3.9 Disposal of gifts and decorations which become the property of the United States. 3.10 Enforcement. 3.11 Responsibility of chief of mission to inform host government of restrictions on employees' receipt of gifts and decorations.

3.12 Exemption of grants and other foreign government assistance in cultural exchange programs from coverage of foreign gifts and decorations legislation.

AUTHORITY: Sec. 515(a)(1), 91 Stat. 862, amending 5 U.S.C. 7342 (1976).

SOURCE: Dept. Reg. 108,798, 45 FR 80819, Dec. 8 1980, unless otherwise noted.

****END OF SECTION****

Sec. 3.1 Purpose.

These regulations provide basic standards for employees of the Department of State, the United States International Development Cooperation Agency (IDCA), the Agency for International Development (AID), and the International Communication Agency (USICA), their spouses (unless separated) and their dependents to accept and retain gifts and decorations.

****END OF SECTION****

Sec. 3.2 Authority.

(a) Section 515(a)(1) of the Foreign Relations Authorization Act of 1978 (91 Stat. 862-866), approved August 17, 1977, (hereafter referred to as "the Act") amended Section 7342 of Title 5, U.S. Code (1976), making substantial changes in the law relating to the acceptance and retention of gifts and decorations from foreign governments.

(b) 5 U.S.C. 7342(g) authorizes each employing agency to prescribe regulations as necessary to carry out the new law.

****END OF SECTION****

Sec. 3.3 Definitions.

When used in this part, the following terms have the meanings indicated:

(a) "Employee" means

(1) an officer or employee of the Department, AID, IDCA, or USICA, including an expert or consultant, however appointed, and

(2) a spouse (unless separated) or a dependent of such a person, as defined in section 152 of the Internal Revenue Code of 1954 (26 U.S.C. 152).

(b) "Foreign government" means:

(1) Any unit of foreign governmental authority, including any foreign national, State, local, or municipal government;

(2) any international or multi-national organization whose membership is composed of any unit of foreign government as described in subsection (b)(1) of this section;

(3) any agent or representative of any such unit or organization, while acting as such;

(c) "Gift" means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government;

(d) "Decoration" means an order device, medal, badge, insignia, emblem or award tendered by, or received from, a foreign government.

(e) "Minimal value" means retail value in the United States at the time of acceptance of \$100 or less, except that on January 1, 1981, and at 3-year

intervals thereafter, "minimal value" is to be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period.

****END OF SECTION****

Sec. 3.4 Restriction on acceptance of gifts and decorations.

(a) An employee is prohibited from requesting or otherwise encouraging the tender of a gift or decoration from a foreign government. An employee is also prohibited from accepting a gift or decoration from a foreign government, except in accordance with these regulations.

(b) An employee may accept and retain a gift of minimal value tendered and received as a souvenir or mark of courtesy subject, however, to the following restrictions (1) Where more than one tangible item is included in a single presentation, the entire presentation shall be considered as one gift, and the aggregate value of all items taken together must not exceed "minimal value".

(2) the donee is responsible for determining that a gift is of minimal value in the United States at the time of acceptance. However, should any dispute result from a difference of opinion concerning the value of a gift, the employing agency will secure the services of an outside appraiser to establish whether the gift is one of "minimal value". If, after an appraisal has been made, it is established that the value of the gift in question is \$200 or more at retail in the United States, the donee will bear the costs of the appraisal. If, however, the appraised value is established to be less than \$200, the employing agency will bear the costs.

(c) An employee may accept a gift of more than minimal value when

(1) such gift is in the nature of an educational scholarship or medical treatment, or

(2) it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the

United States, except that a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States.

(d) An employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency. Except where the employing agency has specific interests which may be favorably affected by employee travel wholly outside the United States, even though it would not normally authorized its employees to engage in such travel, the standards normally applied to determine when proposed travel will be in the best interests of the employing agency and of the United States Government shall be applied in approving acceptance of travel or travel expenses offered by a foreign government.

(1) There are two circumstances under which employees may accept gifts of travel or expenses:

- (i) When the employee is issued official travel orders placing him or her in the position of accepting travel or travel expenses offered by a foreign government which are directly related to the authorized purpose of the travel; or
- (ii) When the employee's travel orders specifically anticipate the acceptance of additional travel and travel expenses incident to the authorized travel.

(2) When an employee is traveling under circumstances described in paragraph (d)(1)(i) of this section, that is, without specific instructions authorizing acceptance of additional travel expenses from a foreign government, the employee must file a report with the employing agency under the procedures prescribed in Sec. 3.6

(e) Since tangible gifts of more than minimal value may not lawfully become the personal property of the donee, all supervisory officials shall, in advising employees of their responsibilities under the regulations, impress upon them their obligation to decline acceptance of such gifts, whenever possible, at the time they are offered, or to return them if they have been sent or delivered without a prior offer. All practical measures, such as periodic briefings, shall be taken to minimize the number of gifts which employees must deposit and

which thus become subject to disposal as provided by law and regulation. Employees should not accept gifts of more than minimal value on the assumption that refusal would be likely to "cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States". In many instances it should be possible, by explanation of the prohibition against an employee's retention of such gifts, to avoid consequences of acceptance, including possible return of the gift to the donor. Refusal of the gift at the inception should typically be regarded as in the interest both of the foreign government donor and the U.S. Government.

****END OF SECTION****

Sec. 3.5 Designation of officials and offices responsible for administration of foreign gifts and decorations.

(a) The Act effects a significant degree of decentralization of administration relative to the disposal of foreign gifts and decorations which become U.S. Government property. Each agency is now responsible for receiving from its employees deposits of foreign gifts of more than minimal value, as well as of foreign decorations not meeting the statutory criteria for retention by the recipient. The agency is also responsible for disposing of this property by return to the donor, for retaining it in the agency if official use of it is approved, for reporting to the General Services Administration within 30 calendar days after deposit items neither disposed of nor retained, and for assuming custody, proper care and handling of such property pending removal from that custody pursuant to disposal arrangements by the General Services Administration. The Secretary of State, however, is made responsible for providing guidance to other executive agencies in the development of their own regulations to implement the Act, as well as for the annual publication of lists of all gifts of more than minimal value deposited by Federal employees during the preceding year. [See Sec. 3.5 (c).] Authority for the discharge of the Secretary's responsibilities is delegated by these regulations to the Chief of Protocol.

(b) The Office of the Chief of Protocol retains primary responsibility for administration of the Act within the Department of State. That Office will, however, serve as the depository only for those foreign gifts and decorations which are turned in by State Department employees. The Director of Personnel Services of the USICA will have responsibility for

administration of the Act within that agency and will serve as the depository of foreign gifts and decorations. Employees of the other foreign affairs agencies must deposit with their respective agencies any gifts or decorations deposit of which is required by law.

(c) Any questions concerning the implementation of these regulations or interpretation of the law should be directed to the following:

- (1) For the Department of State, to the Office of Protocol or to the Office of the Assistant Legal Adviser for Management, as appropriate;
- (2) For IDCA, to the Office of the General Counsel;
- (3) For AID, to the Assistant General Counsel for Employee and Public Affairs; and
- (4) For USICA, to the General Counsel.

****END OF SECTION****

Sec. 3.6 Procedure to be followed by employees in depositing gifts of more than minimal value and reporting acceptance of travel or travel expenses.

(a) An employee who accepted a tangible gift of more than minimal value shall, within 60 days after acceptance, relinquish it to the designated depository office for the employing agency for disposal or, with the approval of that office, deposit it for official use at a designated location in the employing agency or at a specified Foreign Service post. The designated depository Offices are:

- (1) For the Department of State, the Office of Protocol;
- (2) For IDCA, the General Services Division of the Office of Management Planning in AID;
- (3) For AID, the General Services Division of the Office of Management Planning; and
- (4) For USICA, the Office of Personnel Services.

(b) At the time that an employee deposits gifts of more than minimal value for disposal or for official use pursuant to paragraph (a) of this section, or within 30 days after accepting a gift of travel or travel expenses as provided in Sec. 3.4(d) (unless the gift of such travel or travel expenses has been accepted in accordance with specific instructions from the Department or agency), the employee shall file a statement with the designated depository office with the following information:

- (1) For each tangible gift reported:
 - (i) The name and position of the employee;
 - (ii) A brief description of the gift and the circumstances justifying acceptance;
 - (iii) The identity of the foreign government and the name and position of the individual who presented the gift;
 - (iv) The date of acceptance of the gift;
 - (v) The donee's best estimate in specific dollar terms of the value of the gift in the United States at the time of the acceptance; and
 - (vi) Disposition or current location of the gift. (For State Department employees, forms for this purpose are available in the Office of Protocol.)
- (2) For each gift of travel or travel expenses:
 - (i) The name and position of the employee;
 - (ii) A brief description of the gift and the circumstances justifying acceptance; and
 - (iii) The identity of the foreign government and the name and position of the individual who presented the gift.

(c) The information contained in the statements called for in paragraph (b) of this section is needed to comply with the statutory requirement that, not later than January 31 of each year, the Secretary of State publish in the FEDERAL REGISTER a comprehensive listing of all such statements filed by Federal

employees concerning gifts of more than minimal value received by them during the preceding year.

****END OF SECTION****

Sec. 3.7 Decorations.

(a) Decorations tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance may be accepted, retained, and worn by an employee, subject to the approval of the employing agency. Without such approval, the decoration is deemed to have been accepted on behalf of the United States and, like tangible gifts of more than minimal value, must be deposited by the employee with the designated depository office for the employing agency within sixty days after acceptance, for retention for official use or for disposal in accordance with Sec. 3.9.

(b) The decision as to whether a decoration has been awarded for outstanding or unusually meritorious performance will be made:

(1) For the Department of State, by the supervising Assistant Secretary of State or comparable official, except that, in the case of a decoration awarded to an Assistant Secretary or other officer of comparable or higher rank, the decision shall be made by the Office of Protocol;

(2) For IDCA, by the Assistant Director for Administration;

(3) For AID, by the Director of Personnel Management; and

(4) For USICA, by the Supervising Associate Director, the General Counsel, or the Director of the Office of Congressional and Public Liaison (for domestic employees), and by the Director of Area Offices (for overseas employees).

(c) To justify an affirmative decision, a statement from the foreign government, preferably in the form of a citation which shows the specific basis for the tender of the award, should be supplied. An employee who has received or been tendered a decoration should forward to the designated depository office of the employing agency a request for review of the case. This request should contain a statement of circumstances of the award and

such documentation from the foreign government as has accompanied it. The depository office will obtain the decision of the cognizant office as to whether the award meets the statutory criteria and thus whether the decoration may be retained and worn. Pending receipt of that decision, the decoration should remain in the custody of the recipient.

****END OF SECTION****

Sec. 3.8 Approval of retention of gifts or decorations with employing agency for official use.

(a) At the request of an overseas post or an office within the employing agency, a gift or decoration deemed to have been accepted on behalf of the United States may be retained for official use. Such retention should be approved:

- (1) For the Department of State, by the Chief of Protocol;
- (2) For IDCA, by AID's Director of Management Operations;
- (3) For AID, by the Director of Management Operations; and
- (4) For USICA, by the Associate Director for Management.

However, to qualify for such approval, the gift or decoration should be an item which can be used in the normal conduct of agency business, such as a rug or a tea service, or an art object meriting display, such as a painting or sculpture. Personal gift items, such as wristwatches, jewelry, or wearing apparel, should not be regarded as suitable for "official use". Only under unusual circumstances will retention of a decoration for official use be authorized. Every effort should be made to place each "official use" item in a location that will afford the largest number of employees, and, if feasible, members of the public, the maximum opportunity to receive the benefit of its display, provided the security of the location is adequate.

(b) Items approved for official use must be accounted for and safeguarded as Federal property at all times under standard Federal property management procedures. Within 30 days after the official use of a

gift has been terminated, the gift or decoration shall be deposited with the designated depository office of the employing agency to be held pending completion of disposal arrangements by the General Services Administration.

****END OF SECTION****

Sec. 3.9 Disposal of gifts and decorations which become the property of the United States.

(a) Gifts and decorations which have been reported to an employing agency shall either be returned to the donor or kept in safe storage pending receipt of instructions from the General Services Administration for transfer, donation or other disposal under the provisions of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, and the Federal Property Management Regulations (41 CFR Part 101-49). The employing agency shall examine each gift or decoration and the circumstances surrounding its donation and assess whether any adverse effect upon the foreign relations of the United States might result from a return of the gift (or decoration) to the donor, which shall be the preferred means of disposal. If this is not deemed feasible, the employing agency is required by GSA regulations to report deposit of the gift or decoration within 30 calendar days, using Standard Form 120, Report of Excess Personal Property and, as necessary, Standard Form 120A, Continuation Sheet, and citing Section 7342 of Title 5, U.S. Code (1976), on the reporting document. Such reports shall be submitted to the General Services Administration, Washington National Capital Region (WDPO), Attention: Federal Property Resources Service, Seventh and D Streets, S.W., Washington, D.C. 20407.

(b) No gift or decoration deposited with the General Services Administration for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. When depositing gifts or decorations with the designated depository office of their employing agency, employees may indicate their interest in participating in any subsequent sale of the items by the Government. Before gifts and decorations may be considered for sale by the General Services Administration, however, they must first have been offered for transfer to Federal agencies and for donation to the States. Consequently, employees

should understand that there is no assurance that an item will be offered for sale or, if so offered, that it will be feasible for an employee to participate in the sale. Employees are reminded in this connection that the primary aim of the Act is to discourage employees' acceptance of gifts of more than minimal value.

****END OF SECTION****

Sec. 3.10 Enforcement.

(a) Each employing agency is responsible under the Act for reporting to the Attorney General cases in which there is reason to believe that one of its employees has violated the Act. The Attorney General in turn may file a civil action in any United States District Court against any Federal employee who has knowingly solicited or accepted a gift from a foreign government in violation of the Act, or who has failed to deposit or report such gift, as an Act required by the Act. In such case, the court may assess a maximum penalty of the retail value of a gift improperly solicited or received, plus \$5,000.

(b) Supervisory officials at all levels within employing agencies shall be responsible for providing periodic reorientation of all employees under their supervision on the basic features of the Act and these regulations, and for ensuring that those employees observe the requirements for timely reporting and deposit of any gifts of more than minimal value they may have accepted.

(c) Employees are advised of the following actions which may result from failure to comply with the requirements of the Act and these regulations:

(1) Any supervisor who has substantial reason to believe that an employee under his or her supervision has violated the reporting or other compliance provisions of the Act shall report the facts and circumstances in writing to the senior official in charge of administration within the cognizant bureau or office or at the post abroad. If that official upon investigation decides that an employee who is the donee of a gift or is the recipient of travel or travel expenses has, through actions within the employee's control, failed to comply with the procedures established by the Act and these regulations, the case shall be referred to the Attorney General for appropriate action.

(2) In cases of confirmed evidence of a violation, whether or not such violation results in the taking of action by the Attorney General, the senior administrative official referred to in Sec. 3.10(c)(1) as responsible for

forwarding a violation report to the Attorney General shall institute appropriate disciplinary action against an employee who has failed to (i) Deposit tangible gifts within 60 days after acceptance, (ii) account property for the acceptance of travel expenses or (iii) comply with the Act's requirements respecting disposal of gifts and decorations retained for official use.

(3) In cases where there is confirmed evidence of a violation, but no evidence that the violation was willful on the part of the employee, the senior administrative official referred to in Sec. 3.10(c)(1) shall institute appropriate disciplinary action of a lesser degree than that called for in Sec. 3.10(c)(2) in order to deter future violations by the same or another employee.

****END OF SECTION****

Sec. 3.11 Responsibility of chief of mission to inform host government of restrictions on employees' receipt of gifts and decorations.

A special provision of the Act requires the President to direct every chief of a United States diplomatic mission to inform the host government that it is a general policy of the United States Government to prohibit its employees from receiving gifts of more than minimal value or decorations that have not been tendered "in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance." Accordingly, all Chiefs of Mission shall in January of each year conduct a thorough and explicit program of orientation aimed at appropriate officials of the host government concerning the operation of the Act.

Chapter 1-Department of State

****END OF SECTION****

Sec. 3.12 Exemption of grants and other foreign government assistance in cultural exchange programs from coverage of foreign gifts and decorations legislation.

The Act specifically excludes from its application grants and other forms of assistance "to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies". See 22 U.S.C. 2558 (a) and (b) for the terms and conditions under which Congress consents to the acceptance by a Federal employee of grants and other forms of assistance provided by a foreign government to facilitate that participation of such employee in a cultural exchange.

****END OF SECTION****

ATTACHMENT 2E

3 FAM 628: SPEAKING, WRITING, AND TEACHING

HAS BEEN MOVED TO THE SUPPLEMENTAL REFERENCES DATASET

****END OF SECTION****

ATTACHMENT 2F

REPORTING SUSPECTED OFFENSES AND MAKING COMPLAINTS INVOLVING AGENCY PROGRAMS, OPERATIONS, EMPLOYEES OR MONIES

2A. Purpose

This attachment provides the authorities, policies and procedures for the mandatory reporting of suspected offenses, including waste, fraud, abuse, corruptions, or any violation of law, regulation or rule involving Agency programs, operations, employees or monies, and for making complaints to the Agency Inspector General.

****END OF SECTION****

2B. Applicability

This attachment applies to all persons employed by the Agency, regardless of citizenship or location.

****END OF SECTION****

2C. Authorities

1. E.O. 12674, Principles of Ethical Conduct for Government Officers and Employees, April 12, 1989
2. 28 U.S.C. 535, Investigation of Crimes Involving Government Officers and Employees
3. Inspector General Act of 1978, as amended

****END OF SECTION****

2D. Policies

1. Employees must promptly report any information, allegation or complaint relating to waste, fraud, abuse, corruption or any violation of law, regulation or rule involving Agency programs, operations, employees or monies to the Office of the Inspector General, Office of Investigations (IG/I).
2. An employee may report a suspected offense or make a complaint to IG/I directly; he/she is not required to go through his/her supervisor.
3. The identity of the employee reporting a suspected offense will not be disclosed without the employee's consent, unless special circumstances prevent such nondisclosure, e.g., the employee's testimony is required.
4. The IG/I will accept anonymous reports and complaints.
5. A supervisor will not take or threaten to take retaliatory action, directly or indirectly, against any employee for reporting a suspected offense, making a complaint or disclosing information to the IG/I.

****END OF SECTION****

2E. Responsibilities

1. Office of Investigations, Office of the Inspector General (IG/I)

Determines what action is to be taken, by whom and when, in response to a suspected offense or complaint.

2. Employee

a. Reports, in writing or verbally, a suspected offense to the IG/I, directly or through his/her supervisor.

b. Contacts IG/I when in doubt as to whether a situation or incident constitutes an offense.

****END OF SECTION****

2F. Reporting Procedure

Reports of suspected offenses or complaints should be addressed to:

1. In AID/Washington, the Office of the Assistant Inspector General for Investigations (AIG/I).

2. At overseas posts, the Regional Inspector General for Investigations serving the post.

****END OF SECTION****

ATTACHMENT 2G

POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

SUBCHAPTER 1. GENERAL PROVISIONS

1-1. RIGHTS RESERVED TO EMPLOYEES

Specifically reserved to an employee affected by section 7324 of title 5, United States Code, and civil service rule IV are the right to vote as he pleases and the right to express his opinion as an individual on all political subjects and candidates.

1-2. NATURE OF RESTRICTIONS

The restrictions on the political activity of employees of the executive branch of the Federal Government are in subchapter III of chapter 73, title 5, United States Code and section 14. of civil service rule IV. The law and the rules prohibit using official authority or influence for the purpose of interfering with an election or affecting its results, and taking an active part in political management or in political campaigns. Section 7324 prohibits the same activities on the part of all employees of the executive branch which the Commission had prior to July 19, 1940, determined were prohibited on the part of employees in the competitive service under the civil service rules. Restrictions other than those imposed by section 7324 of title 5, United States Code, and rule IV are summarized in subchapter 5.

1-3. RESPONSIBILITY FOR ENFORCEMENT

a. **Competitive Service.** The Commission is responsible for enforcing the restrictions against political activity by employees in the competitive civil service. By agreement with the U.S. Postal Service, the Commission investigates and adjudicates allegations of political activity involving postal employees. Any individual or agency having knowledge of a possible violation of Subchapter III of Chapter 73 of title 5, U.S.C. (the Hatch Act) by an employee in the competitive service or by a postal employee should promptly provide all relevant information directly to the Office of the General Counsel, U.S. Civil Service Commission, 1900 E Street, N.W., Washington, D.C. 20415, phone: (202) 632-7600.

b. **Excepted Service.** The employing agency is responsible for enforcing the restrictions against political activity by employees in the excepted service. Any individual or agency having knowledge of a possible violation of Subchapter III of Chapter 73 of title 5, U.S.C. (the Hatch

Act) by an employee in the excepted service should promptly provide all relevant information directly to the employing agency.

1-4. PENALTIES

An employee found to have violated the restrictions imposed by section 7324 of title 5, United States Code or section 4.1 of civil service rule IV must be removed from his position and cannot be reemployed in any position the pay of which is payable under the same appropriation as the position from which he was removed. This restriction is not limited to the appropriation act for any particular fiscal year. If, however, the Commission determines by unanimous vote that the violation does not warrant removal, it may impose a lesser penalty, but the penalty cannot be less than a 30-day suspension without pay.

****END OF SECTION****

SUBCHAPTER 2. COVERAGE

2-1. GENERAL COVERAGE

a. Employees subject to restrictions. In the absence of specific statutory exemption, the basic political activity restrictions apply to any person employed in the executive branch of the Federal Government, or any agency thereof, or in the government of the District of Columbia and to officers, employees and enrollees of the Job Corps. If the employee is in doubt about whether any particular activity is prohibited, he should write to the General Counsel of the Civil Service Commission for advice before engaging in the activity.

b. Reporting violations. It is the duty of any person having knowledge of a violation of any of the provisions prohibiting political activity to submit the facts to the Office of the General Counsel, United States Civil Service Commission, Washington, D.C. 20415.

2-2. ACTIVITY THROUGH ANOTHER PERSON

Any political activity that is prohibited for an employee acting independently is also prohibited for an employee acting in open or secret cooperation with others.

Whatever the employee may not do directly or personally, he may not do indirectly or through an agent, officer, or employee chosen by him or subject to his control. Political activity in fact, regardless of the methods or means used by the employee, constitutes the violation. This does not mean that an employee's husband or wife may not engage in politics independently, upon his or her own initiative and in his or her own behalf.

2-3. EMPLOYEES ON LEAVE

In general, an employee who is subject to the basic political activity prohibitions while on active duty is subject to them while on leave with pay, leave without pay, or furlough, and incurs the same penalties for an offense committed while in leave or furlough status as for an offense committed while on active duty. This applies though the leave is terminal leave, and even though the employee's resignation has been submitted and accepted. However, if lump-sum payment is made for accrued annual leave the person involved is not subject to the political activity restrictions during the period covered by the lump-sum payment or thereafter. It is not permissible for an employee to take leave of absence for the purpose of working with a political candidate, committee, or organization, or for the purpose of becoming a candidate for office with the understanding that he will resign his position if nominated or elected.

2-4. INTERMITTENT EMPLOYEES

Persons who are employed on an irregular or occasional basis, e.g., experts and consultants on a per diem basis, or w.o.c. and w.a.e. employees, are subject to the political activity restrictions of the law while in an active duty status only and for the entire 24 hours of any day of actual employment.

2-5. TEMPORARY, PART-TIME, AND EMERGENCY EMPLOYEES

Temporary, part-time, and emergency employees are subject to the statute and rule.

2-6. PERSONS NOT SUBJECT TO RESTRICTIONS

a. The prohibition against active participation in political management and in political campaigns in section 7324(a)(2) of title 5, United States Code,

and section 4.1 of civil service rule IV does not apply to the following persons:

(1) Executive branch

An employee paid from the appropriation for the Office of the President.

The head or the assistant head of an executive department or military department.

An employee appointed by the President by and with the advice and consent of the Senate, and who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws.

Ambassadors of the United States.

Ministers of the United States.

An employee of The Alaska Railroad residing in a municipality on the line of the railroad when the permitted activity is confined to the municipality in which he resides.

An employee who works on an irregular or occasional basis on the days that he performs no services.

(2) District of Columbia

The Recorder of Deeds of the District of Columbia.

b. The political activity restrictions of chapter 73 of title 5, United States Code and civil service rule IV do not apply to the following persons:

(1) Legislative branch

Officers and employees of the legislative branch of the Federal Government, including secretaries and clerks of Members of Congress and congressional committees.

(2) Judicial branch

Officers and employees of the judicial branch of the Federal Government, including United States commissioners, clerks of United States courts, referees in bankruptcy, and their secretaries, deputies, and clerks.

2-7. TOTAL EXEMPTION FROM THE RESTRICTIONS

a. Officers or employees of any educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia, or by any recognized religious, philanthropic, or cultural organization.

b. Persons who are retained from time to time to perform special services on a fee basis and who take no oath of office.

c. Persons who receive benefit payments, such as old age assistance and unemployment compensation under the Social Security Act.

d. Persons retired from the Federal service, unless reemployed in the executive branch of the Federal Government.

e. Persons serving as star route and contract carriers and clerks in fourth-class post offices, provided such persons are not at the same time holding other Government employment.

2-8. OFFICERS, EMPLOYEES AND ENROLLEES OF THE JOB CORPS

Enrollees of the Job Corps, as well as officers and employees of the Job Corps, are subject to the same basic political activity restrictions as persons employed in the executive branch of the Federal Government. (Section 118 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2728, as amended).)

****END OF SECTION****

SUBCHAPTER 3. PERMISSIBLE AND PROHIBITED ACTIVITIES 3-1.
DEFINITIONS

a. In this chapter

(1) Political party means a national political party, a State political party, and an affiliated organization;

(2) Election includes a primary, special, and general election;]

(3) Nonpartisan election means (a) an election at which none of

the candidates is to be nominated or elected as representing a political party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; and

(b) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character; and

(4) Partisan when used as an adjective refers to a political party.

3-2. PERMISSIBLE ACTIVITIES

a. All employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law. Each employee retains the right to:

(1) Register and vote in any election;

(2) Express his opinion as an individual citizen privately and publicly on political subjects and candidates;

(3) Display a political picture, sticker, badge or button;

(4) Participate in the nonpartisan activities or a civic, community, social, labor, or professional organization, or of a similar organization;

(5) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

(6) Attend a political convention, rally, fund-raising function; or other political gathering;

(7) Sign a political petition as an individual citizen;

(8) Make a financial contribution to a political party organization;

(9) Take an active part, as an independent candidate, or in support of an independent candidate, in a partisan election covered by subchapter 4.

(10) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;

(11) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

(12) Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law; and

(13) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise his efficiency or integrity as an employee or the neutrality, efficiency, or integrity of his agency.

(b) Paragraph (a) of this section does not authorize an employee to engage in political activity in violation of law, while on duty, or while in a uniform that identifies him as an employee. The head of an agency may prohibit or limit the participation of an employee or class of employees of his agency in an activity permitted by paragraph (a) of this section, if participation in the activity would interfere with the efficient performance of official duties, or create a conflict or apparent conflict of interests.

3-3. PROHIBITED ACTIVITIES

a. An employee may not use his official authority or influence for the purpose of interfering with or affecting the result of an election.

b. An employee may not take an active part in political management or in a political campaign, except as permitted by law or regulation.

c. Activities prohibited by paragraph (b) of this section include but are not limited to:

- (1) Serving as an officer of a political party, a member of a national, State, or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;
- (2) Organizing or reorganizing a political party organization or political club;
- (3) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose or in connection with a partisan election;
- (4) Organizing, selling tickets to, seeking support for, or actively participating in a fund-raising activity of, a political party or political club;
- (5) Taking an active part in managing the political campaign of a candidate for public office or political party office;
- (6) Being a candidate for, or campaigning for, an elective public office;
- (7) Taking an active part in an organized solicitation of votes in support of or in opposition to a candidate for public office or political party office;
- (8) Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or candidate in a partisan election;
- (9) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;
- (10) Endorsing or opposing a candidate in a partisan election in a political advertisement, a broadcast, campaign literature, or similar material;
- (11) Serving as a delegate, alternate, or proxy to a political party convention;

(12) Addressing a State or national convention or caucus, or a rally or similar gathering of a political party in support of or in opposition to a candidate for public or political party office, or on a partisan political question; and

(13) Initiating or circulating a nominating petition for a candidate in a partisan election.

****END OF SECTION****

SUBCHAPTER 4. EXCEPTION OF CERTAIN ELECTIONS

4-1. EXCEPTED ELECTIONS

a. Sections 7326 and 7327 of title 5, United States Code, provide exceptions to the prohibition against activity in political management or in a political campaign by an employee in connection with:

(1) A nonpartisan election, and

(2) Subject to the conditions and limitations established by the Commission, an election held in a municipality or political subdivision designated by the commission under section 7327.

4-2. GRANT OF PRIVILEGE TO RESIDENTS OF CERTAIN LOCALITIES

a. Eligible localities. The Civil Service Commission is authorized by section 7327 to issue regulations permitting Federal employees, who live in a municipality or other political subdivision in the immediate vicinity of the District of Columbia in the States of Maryland and Virginia or in municipalities where the majority of voters are employed by the Federal Government, to take part in political management and political campaigns for local offices, as provided in section 4-4.

b. Requirements for privilege. As a prerequisite to the extension of the privileges of section 7327 to any particular locality the Commission must determine that special or unusual circumstances exist which show that

participation in local politics is in the domestic interest of the employees who reside in that community.

4-3. REQUEST FOR PRIVILEGE

Requests for the extension of the privileges of section 7327 to any locality must be made formally, and must be submitted to the Commission by representatives of the community involved. The petitioners must furnish certain specified information about their community and its elections. Information about the data to be furnished, and the prerequisites to be met, may be obtained from the United States Civil Service Commission, Washington, D.C. 20415.

4-4. RESTRICTIONS WHERE PRIVILEGE HAS BEEN GRANTED

a. The privilege of active participation in local self-government, when granted by the Commission, under section 7327, is subject to the following restrictions:

(1) Participation shall be as an independent candidate or on behalf of, or in opposition to, an independent candidate;

(2) Candidacy for, or service in, an elective office shall not result in neglect of or interference with the performances of the duties of the employee or create a conflict or apparent conflict of interests.

4-5. DESIGNATED LOCALITIES

The Commission has extended the privileges allowed by section 7327 of title 5, United States Code, to the following municipalities or political subdivisions by formal action recorded on the dates indicated:

In Maryland

Annapolis (May 16,1941) Anne Arundel County (Mar. 14,1973) Berwyn Heights (June 15,1944) Bethesda (Feb. 17, 1943) Bladensburg (Apr. 20, 1942) Bowie (Apr. 11, 1952) Brentwood (Sept. 26, 1940) Capitol Heights (Nov. 12, 1940) Cheverly (Dec. 18, 1940) Chevy Chase, sections 1 and 2 (Mar. 4, 1941) Chevy Chase, section 3 (Oct. 8, 1940) Chevy Chase, section 4 (Oct. 2, 1940) Martin's Additions 1, 2, 3, and 4 to Chevy Chase (Feb. 13, 1941) Chevy Chase View (Feb.

26, 1941) College Park (June 13, 1945) Cottage City (Jan. 15, 1941) District Heights (Nov. 2, 1940) Edmonston (Oct. 24, 1940) Fairmont Heights (Oct. 24, 1940) Forest Heights (Apr. 22, 1949) Garrett Park (Oct. 2, 1940) Glenarden (May 21, 1941) Glen Echo (Oct. 22, 1940) Greenbelt (Oct 4, 1940) Howard County (Apr. 25 1974) Hyattsville (Sept. 20, 1940) Kensington (Nov. 8, 1940) Landover Hills (May 5, 1945) Montgomery County (Apr. 20, 1964) Morningside (May 19, 1949) Mount Rainier (Nov. 22, 1940) North Beach (Sept. 20, 1940) North Brentwood (May 6, 1941) North Chevy Chase (July 22, 1942) Northwest Park (Feb. 17, 1943) Prince Georges County (June 19, 1962) Riverdale (Sept. 26, 1940) Rockville (Apr. 15, 1948) Seat Pleasant (Aug. 31, 1942) Somerset (Nov. 22, 1940) Takoma Park (Oct. 22, 1940) University Park (Jan. 18, 1941) Washington Grove (Apr. 5, 1941) In Virginia Alexandria (Apr. 15, 1941) Arlington County (Sept. 9, 1940) Clifton (July 14, 1941) Fairfax County (Nov. 10, 1949) Town of Fairfax (Feb. 9, 1954) Falls Church (June 6, 1941) Herndon (Apr. 7, 1945) Loudoun County (Oct. 1, 1971) Portsmouth (Feb. 27, 1958) Prince William County (Feb. 14, 1967) Vienna (Mar. 18, 1946) Other Municipalities Anchorage, AK (Dec. 29, 1947) Benicia, CA (Feb. 20, 1948) Bremerton, WA (Feb. 27, 1946) Centerville, GA (Sept. 16, 1971) Crane, IN (Aug. 3, 1967) District of Columbia (May 16, 1974) Elmer City, WA (Oct. 28, 1947) Huachuca City, AZ (April 9, 1959) New Johnsonville, TN (April 26, 1956) Norris, TN (May 6, 1959) Port Orchard, WA (Feb. 27, 1946) Shrewsbury, NJ (July 2, 1968) Sierra Vista, AZ (Oct. 5, 1955) Warner Robins, GA (Mar. 19, 1948)

****END OF SECTION****

SUBCHAPTER 5. OTHER RESTRICTIONS ON POLITICAL ACTIVITY

5-1. POLITICAL CONTRIBUTIONS AND ASSESSMENTS

Sections 602, 603, 606, 607 of title 18 of the United States Code, which were originally sections 11, 12, 13, and 14 of the Civil Service Act, deal with political assessments. The penalty for violations of these sections is a fine of no more than \$5,000 or imprisonment for no more than three years, or both. These violations are considered to be felonies, as they are punishable by terms of imprisonment exceeding one year.

5-2. POLITICAL ASSESSMENTS

a. Coverage. Provisions of these sections make it unlawful for any of the following officers, employees, or persons to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever from any other officer, employee, or person:

(1) Senators and Representatives in, and Delegate or Resident Commissioners to, Congress;

(2) Candidates for and persons elected as Senator, Representative in, or Delegate or Resident Commissioner to, Congress;

(3) Officers and employees of the United States;

(4) Persons receiving any pay for services from money derived from the Treasury of the United States.

b. "Political purpose" defined. The words "for any political purpose," as used above, qualify not only the contribution, but the solicitation (*United States v. Scott*, 74 Fed., 213).

c. Acting as agent or messenger. The statutory prohibition applies to the receipt of a political contribution as a mere agent or messenger for the purpose of turning it over to a political organization (*United States v. Dutro*, L.W. 1913, Western District of Tennessee, unreported).

5-3. CIRCULARS OF SOLICITATION

The sending of a circular letter by a political committee to Federal officers and employees soliciting financial aid in Congressional or State elections, upon which or attached to which appear the names of Federal officers or employees, is a violation of the prohibition on political assessments (24 Op. Atty. Gen. 133). The statute, as it stands, together with the opinion just cited, unquestionably condemns all such circulars, notwithstanding the particular form of words adopted in order to show a request rather than a demand, and to give responses a quasi-voluntary character.

5-4. SOLICITATION IN FEDERAL BUILDINGS

All persons, whether or not employed by the United States, are prohibited from soliciting in any manner whatever or receiving a contribution of money, or any other thing of value, for any political purpose whatever in any room or building occupied in the discharge of official duties by any officer or employee of the United States, or in any navy yard, fort, or arsenal.

5-5. SOLICITATION BY LETTER

Solicitation by letter or circular addressed to and delivered by mail or otherwise to an officer or employee of the United States at the office or building in which he is employed in the discharge of his official duties is a solicitation "in a room or building" within the meaning of section 603 of title 18 of the U.S. Code (United States v. Thayer, 209 U.S. 39). It has been held that sending letters through the mails to Government employees soliciting political contributions is a violation of 18 U.S.C. 603 when the street or home address is omitted and the letters are consequently delivered by the postal authorities to a Government building.

5-6. PAYMENT BY ONE EMPLOYEE TO ANOTHER

No officer, clerk, or other person in the service of the United States shall directly or indirectly give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator, Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of, or to be applied to, the promotion of any political object (18 U.S.C. 607).

5-7. DISCRIMINATION BECAUSE OF POLITICAL CONTRIBUTIONS

Discrimination, and promises or threats to discriminate, for giving or withholding or neglecting to make any contribution for any political purpose are prohibited.

5-8. PURCHASE AND SALE OF PUBLIC OFFICE

a. Statutory prohibition. The United States Code, title 18, sections 210 and 211, provides that it shall be unlawful:

(1) To pay or offer or promise to pay any money, or thing of value, to any person, firm, or corporation in consideration of the use or promise of use of

any influence to procure any appointive office or place under the United States for any person.

(2) To solicit or receive, either as a political contribution, or for personal emolument, any money or thing of value in consideration of the promise of support, or use of influence, in obtaining for any person any appointive office or place under the United States.

b. Penalty. The penalty for violation is imprisonment of not more than one year, or fine of not more than \$1,000 or both.

5-9. POLITICAL RECOMMENDATIONS AND DISCRIMINATION

Civil service laws and other statutes, and the civil service rules, contain provisions prohibiting political discrimination, promotions because of political influence, political recommendations, and the consideration or filing of political recommendations.

5-10. OTHER CRIMINAL OFFENSES

a. Various political activities are made criminal offenses by provisions of United States law other than those described above. These provisions of law are enforced by the Department of Justice, and the penalty for their violation is a fine or no more than \$1,000 or imprisonment for no more than one year, or both. Among the acts made unlawful by these provisions are:

(1) Intimidating, threatening, or coercing voters in Federal elections (18 U.S.C. 594).

(2) Using official authority in interfering with a Federal election by a person employed in any administrative position by the United States or by any department, independent establishment, or agency of the United States or by any State, agency, or political subdivision thereof in connection with any activity financed in whole or in part by Federal funds (18 U.S.C. 595).

(3) Promising Federal employment, compensation, or any benefit from Federal funds, in return for political activity or support (18 U.S.C. 600).

(4) Depriving anyone of employment, compensation, or any benefit derived from Federal relief or work relief funds on account of race, creed, color, or political activity (18 U.S.C. 601).

(5) Soliciting, assessing, or receiving subscriptions or contributions for political purposes from anyone on Federal relief or work relief (18 U.S.C. 604).

(6) Furnishing or disclosing or receiving by anyone of lists of persons on Federal relief or work relief for political purposes (18 U.S.C. 605).

(7) Using Federal funds appropriated for relief, work relief, or public works, so as to interfere with or coerce any individual in his right to vote (18 U.S.C. 598).

(8) Paying or offering to pay any person for voting or refraining from voting, or for voting for or against any candidate for Senator or Representative in, or Delegate or Resident Commissioner to, Congress (18 U.S.C. 597).

(9) Soliciting, receiving, or accepting payment for one's vote or for withholding one's vote (18 U.S.C. 597).

****END OF SECTION****

SUBCHAPTER 6. PROCEDURES FOR THE COMPETITIVE SERVICE

6-1. INVESTIGATION

Investigation of allegations of prohibited political activity on the part of an employee in the competitive service is conducted by the Civil Service Commission. The employing agency is notified of the investigation. The employee may make a statement concerning the substance of the allegations of political activity on his part.

6-2. NOTIFICATION OF PROPOSED ACTION-CHARGES

a. Charges. The Commission's General Counsel notifies the employee in writing when he decides that the report of investigation indicates that the law or the rule has been violated. The notice lists all charges, specifically and in detail, and the penalty. The employee is entitled to be retained in an active duty status until a final decision is made by the Commission. Any adverse personnel action is taken by the agency are likewise notified if the General

Counsel determines to close any case with a finding that a violation of the law and rule has not been established.

b. Reply. The employee is allowed 15 days from his receipt of the notice to submit an answer. His answer may be in person or in writing, or both, and he may also furnish affidavits to support his answer.

c. Referral. After reviewing the employee's answer or after the time for answering has expired, the General Counsel may close the case or refer it to the Commission's examiner for further proceedings.

d. Motions. An application or request for an order or ruling not otherwise specifically provided for shall be made by motion addressed to the Commission or the examiner. The motion and supporting reasons shall be served on the parties. Objections to a motion shall be submitted within 10 days after the motion is served, except that a motion for continuance or extension of time may be ruled upon ex parte.

6-3. HEARING

(a) Unless the employee and the General Counsel agree to waive a hearing, the examiner shall schedule a hearing considering the convenience of the parties in setting time and place. The hearing examiner shall notify the parties of the date and place of the hearing at least 10 days in advance.

(b) Testimony is under oath or affirmation. Witnesses who testify are subject to cross-examination. Each party is responsible for securing the attendance of his witnesses. The examiner may allow the introduction of affidavits.

(c) The hearing is recorded by a reporter designated by the Commission. The Commission furnishes a copy of the transcript to the employee without charge.

6-4. DECISION

Following the hearing, or the receipt of the file when hearing is waived, the examiner shall prepare and forward to the Commission his recommended decision and the record on which it is based. The

Commission makes its decision on this record and notifies the employee and the employing agency.

6-5. PROCEDURES FOR JOB CORPS

An action against an officer, employee or an enrollee of the Job Corps is processed by the Commission under the same procedures as for the competitive service.

****END OF SECTION****

SUBCHAPTER 7. PROCEDURES FOR THE EXCEPTED SERVICE

7-1. JURISDICTION

The restrictions on political activity in sections 7324-7327 of title 5, United States Code, and in sections 733.111-733.124 apply to employees in the excepted service. It is the responsibility of the employing agency to investigate and decide allegations of prohibited political activity on the part of an excepted-service employee.

7-2. AGENCY PROCEDURE

In cases of alleged political activity by employees in the excepted service, agencies should follow procedures like those in subchapter 6.

7-3. APPEAL TO THE COMMISSION

a. If the final agency decision is adverse to the employee, he may appeal to the Commission no later than 15 days after his receipt of the decision. The notice of decision should inform the employee of the right of appeal to the Commission, the time limit for appeal, and the place where the appeal must be filed. The Commission, at its discretion, may extend the 15-day time limit for filing an appeal if the employee shows that due to circumstances beyond his control, he was unable to file his appeal within the time allowed.

b. The appeal must be in writing, addressed to the United States Civil Service Commission, Washington, D.C. 20415, and should state whether the employee wishes a hearing. If the employee waives a hearing, the case is submitted on the record to the Commissioners.

7-4 RETENTION OF EMPLOYEE PENDING DECISION ON APPEAL

If the employee files a timely appeal with the Commission, he should be retained in an active duty status until a final decision is made by the Commissioners. If an appeal is not taken within the time allowed, the administrative decision of the agency becomes final.

7-5. HEARING ON APPEAL TO THE COMMISSION

a. Right of hearing. An employee who appeals to the commission has the right to a personal appearance, called a hearing. The hearing is held at the time and place that the Commission may determine. Notice of hearing is given at least 10 days in advance of the date of the hearing.

b. Information considered. The hearing is held before an examiner designated by the Commission. Testimony is under oath or affirmation. Affidavits and other documentary evidence may be introduced.

c. Representation. The employee may be represented by counsel. The employee and the agency representative each are responsible for securing the attendance of their witnesses. Witnesses who testify at the hearing are subject to cross-examination.

d. Recording. The hearing is recorded by a reporter designated by the Commission. The Commission furnishes a copy of the transcript to the employee without charge.

e. Filing briefs. It is within the discretion of the examiner to permit, and fix the time for, the filing of briefs.

7-6. FINAL DECISION

The decision of the Commissioners is sent to the employee and the employing agency and states the reasons on which it is based. The employing agency is required to comply with the decision.

****END OF SECTION****

Executive Branch Personnel Public Financial Disclosure
Report (SF 278) or **OGE 278**

CDT: 1983/11/28 EDT: 1983/11/28

OGE Form 450 Confidential Financial Disclosure Report

CDT: 1983/11/28 EDT: 1983/11/28

Confidential Statement of Employment and Financial Interests (For Use by
Special Government Employees)

AID 4-450 (12/76)

CDT: 1983/11/28 EDT: 1983/11/28

ATTACHMENT 2K

TITLE V-POST EMPLOYMENT CONFLICT OF INTEREST

SEC. 501 (a) Section 207 of title 18, United States code, is amended to
read as follows:

18 USC 207

"Sec. 207. Disqualification of former officers and employees;
disqualification of partners of current officers and employees

"(a) Whoever, having been an officer or employee of the executive branch
of the United States Government, of any independent agency of the United
States, or of the District of Columbia, including a special Government
employee, after his employment has ceased, knowingly acts as agent or
attorney for, or otherwise represents, any other person (except the United
States), in any formal or informal appearance before, or, with the intent to
influence, makes any oral or written communication on behalf of any other
person (except the United States) to"(1) any department, agency, court, court-
martial, or any civil, military, or naval commission of the United States or the
District of Columbia, or any officer or employee thereof, and

"(2) in connection with 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 or the District of Columbia is a party or has a direct and substantial interest, and

"(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

"(b) Whoever, (i) having been so employed, within two years after his employment has ceased, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) concerning any formal or informal appearance before"(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) in connection with 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 or the District of Columbia is a party or has a direct and substantial interest, and [Penalty]

"(3) which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or in which he participated personally and substantially as an officer or employee; or

"(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of

anyone other than the United States, to"(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

"(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

"(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest --shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

[5 USC 530] "(d) Subsection (c) of this section shall apply to a person employed"(1) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

"(2) in a position for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, and who has significant decision-making or supervisory responsibility, as designated by the Director of the Office of Government Ethics, in consultation with the head of the department or agency concerned;

"(3) on active duty as a commissioned officer of a uniformed service assigned to a pay grade of 0-7 or above as described in section 201 of title 37, United States Code; or

[Departments and agencies, cooperation. Rule.]

"(4) in a position designated by the Director of the Office of Government Ethics. Within twelve months from the date of enactment of this subsection, the Director of the Office of Government Ethics shall designate positions, which are not included under paragraph (2) of this subsection and which involve significant decision-making authority, or other duties which are substantially similar to those exercised by persons covered by paragraph (2) of this subsection. On an annual basis, the Director shall review the positions designated pursuant to this paragraph, making additions and deletions as are necessary to satisfy the purposes of subsection (c). Departments and agencies

shall cooperate to the fullest extent with the Director of the Office of Government Ethics in exercising his responsibilities under this paragraph.

"(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises function which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

[Consultation. Publication in Federal Register.]

"(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

[Penalty.]

"(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his

official responsibility, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

"(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

"(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

[Notice, hearing opportunity.]

[Departments and agencies, consultation.]

"(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such depart or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection."

[18 USC 201]

(b) The item relating to section 207 in the table or sections at the beginning of chapter 11 of title 18, United States Code, is amended to read as follows:

"207. Disqualification of former officers and employees; disqualification of partners of current officers and employees."

****END OF SECTION****

APPLICABILITY

[18 USC 207 note.]

SEC. 502. The amendments made by section 501 shall not apply to those individuals who left Government service prior to the effective date of such amendments or, in the case of individuals who occupied positions designated pursuant to section 207(d) of title 18, United States Code, prior to the effective date of such designation; except that any such individual who returns to the Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation.

****END OF SECTION****

EFFECTIVE DATE

[18 USC 207 note.]

SEC. 503. The amendments made by section 501 shall become effective on July 1, 1979.

****END OF SECTION****

ATTACHMENT 2L

OFFICE OF PERSONNEL MANAGEMENT 5 CFR

Part 737 Post Employment Conflict of Interest

See also, Interim Update Dataset: Major Functional Series 400, Interim Update #12, Ethics Rules on Seeking Employment and Post-Employment Restrictions.

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is revising the regulations implementing the restrictions on post employment activity established by Title V of the Ethics In Government Act of 1978. These regulations provide specific guidance to the executive agencies in exercising the administrative enforcement authority; and establish the procedures for making certain determinations and designations under the Act.

EFFECTIVE DATE: March 3, 1980.

FOR FURTHER INFORMATION CONTACT: H. Lawrence Garrett at (202)6327642.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management ("OPM") is publishing final regulations to supplement and particularize the restrictions on post employment activity established by Title V of the Ethics in Government Act of 1978 ("the Act"). Interim regulations were published in the Federal Register on April 3, 1979 (44 FR 19974-19988). Changes have been made to conform to the amendments made to 18 U.S.C. 207 by Pub. L. 96-28, signed into law on June 22, 1979. In addition, editorial revisions and other changes have been made in order to simplify and clarify the regulations.

(1) Major Revisions

The following summarizes those provisions of the interim regulations that were changed to reflect the amendments made to Title V of the Act by Pub.

L. 96-28.

A. The Subsection 207(b)(ii) Prohibition (Sec. 737.9)-Assistance in Representation

The language of the Act, as originally enacted, prohibited those designated as Senior Employees from providing assistance in representing any person, other than the United States, "concerning" any formal or informal appearance. The original language was not thought to accurately reflect the intention of Congress in that it allowed for two possible but clearly unintended interpretations: (i) that certain otherwise legitimate activities connected with the management of grants and contracts were barred, and (ii) that the "assistance in representing" bar extended both to matters in which the former Senior Employee had personally and substantially participated and matters which, although not having personally and substantially participated in them, had been actually pending under his/her official responsibility. The amendments to the Act provide that 18 U.S.C. 207(b)(ii) applies only to that assistance given within two years after leaving Government service, by "personal presence" at an appearance before the Government—for example, a negotiation or proceeding. The amendments further provide that this two-year bar applies only to matters in which the former employee had "personally and substantially" participated.

B. Limitation of Subsection 207(c) Prohibition (Sec. 737.11)

Subsection 207(c), as added by the Act, prohibits for one year an appearance by a former Senior Employee before his or her former department or agency. However, 18 U.S.C. 207(e), also added by the Act, in most cases removes that prohibition with respect to an appearance of such an individual before a separate statutory agency or bureau (other than the one he had served) within the parent department or agency.

Amendments to 18 U.S.C. 207(d) enacted by Pub. L. 96-26 give the Director of the Office of Government Ethics ("OGE") the authority to further limit the application of the one-year "cooling-off" bar mentioned above. More particularly, although a former Senior Employee will continue to be prohibited from contact with those non-statutory segments of his or her former department or agency where there is potential for unfair influence, he or she may be permitted appearances before "separate and distinct" components of the former department or agency where there exists no such potential. The new permission is not, however, available for those former Senior Employees who held

Executive Level positions or for members of the uniformed services who served in pay grades 0-8 and 0-10. Unlike the provisions of 18 U.S.C. 207(e) regarding separate statutory agencies, those of 18 U.S.C. 207(d) make its benefit available in some instances to the former head of a separate component.

The amendments of Pub. L. 96-26 also make the prohibitions of subsection (c) of 18 U.S.C. 207 inapplicable to appearances, communications or representations made by a former Senior Employee who is an elected representative of a State or local government, or a regular employee of (i) such a government, (ii) a non-profit hospital or medical research institution, or (iii) a degree granting institution of higher education. Such appearances, communications or representations must be made on behalf of such governments or specified organizations in order to be exempt.

C. Modification of Senior Employee Designations (Sec. 737.25)

Under the original provisions of 18 U.S.C. 207(d)(3) all active duty commissioned officers of a uniformed service assigned to pay grade 0-7 and above were automatically designated by statute as Senior Employees for purposes of subsections (b)(ii) and (c) of 18 U.S.C. 207.

The amendments of Pub. L. 96-28 added a new provision (207(d)(1)(C)) which equalized the treatment of uniformed service officers, in relation to civilian personnel, by specifying that officers serving in pay grades 0-7 and 0-8 shall be made subject to the special restrictions for Senior Employees-(i.e., the two-year assistance bar (207(b)(ii)) and the one-year bar against doing business with one's former agency (207(c))-only if they held positions of "significant decision-making or supervisory responsibility" as designated by the Director, OGE.

Finally, the amendments restricted the civilian employee positions which may be designated, by the Director, OGE, as subject to the special restrictions for Senior Employees, to those positions for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17, or which are established in the Senior Executive Service. Essentially, the amendments codify the policy reflected in OPM's interim regulations published on April 3, 1979 (44 FR 19986).

(2) Analysis of Comments

The interim regulations provided a 45 day period for public comment. OPM received comments from 28 agencies, two law firms and two labor organizations. A number of the comments offered specific recommendations for clarifying or modifying specific provisions of the interim regulations. OPM has proposed modification of certain of the regulations, as discussed below. In addition, guidance issued through the Federal Personnel Manual System will address certain other concerns expressed during the public comment period.

****END OF SECTION****

A. General

Two commenters asked that the regulations specifically state that Part 737 does not incorporate or supplant restrictions contained in other laws and regulations or in professional codes of conduct. The recommendations were adopted and incorporated in the final regulations.

Only one commenter felt that, since 18 U.S.C. 207 can be enforced criminally, it was inappropriate for OPM to propound a definitive interpretation of its provisions, and that OPM should state that it is only providing an advisory interpretation. We believe, however, that it would be inappropriate to require Federal employees to make decisions regarding continued employment with the Government on the basis of unclear constraints or otherwise require them to act at their peril. Congress prescribed a relationship between OPM and the Department of Justice, giving the Director, OGE, the responsibility for developing regulations in consultation with the Attorney General. As to matters involving criminal proscriptions, it was decided early that these regulations should have the concurrence of the Attorney General so as to avoid the anomalous result that a particular activity might be viewed as triggering no administrative enforcement, while possible triggering criminal enforcement. While criminal enforcement of the provisions of 18 U.S.C. 207 remains the exclusive responsibility of the Attorney General, the Attorney General has advised that these regulations are consistent with his interpretation for criminal enforcement responsibilities.

One commenter observed that it seems improper to have agencies advise present and former employees as to the requirements of the Act, when agencies also have an obligation to report alleged violations of law to the Department of Justice. (28 U.S.C. 535) OPM sees no such impropriety, but rather regards it the duty of such agencies to advise their employees so as to cause their conduct to conform to the law.

One commenter questioned the absence of any provision in the regulations dealing with a case in which a high-ranking Government official, who awarded a major contract to a private entity, is subsequently hired by the private entity. The regulations do not contain such a provision because the Act does not prohibit such employment, but only restricts the post employment representational activity of a former Government employee in relation to such a contract. Another commenter raised the situation of a former private sector employee, who, as a Government official, awards a contract to his or her former employer. Such a situation is not subject to the provisions of 18 U.S.C. 207 or these regulations, but might trigger 18 U.S.C. 208, given a current interest by such an employee.

One commenter asked for a clarification of when self-representation is permitted under subsections 207(a), (b) and (c). Self-representation is generally permitted under subsections 207 (a) and (b). OPM will publish Federal Personnel Manual guidance periodically concerning self-representation, and OGE will publish formal advisory opinions concerning self-representation.

It was observed in one comment that since OMB circular A-76 provides that a contractor must give the right of first refusal for jobs contracted out by an agency to Federal employees, the regulations should address the section 207 problems which might arise. OMB Circular A-76 further provides that the right of first refusal would apply only when consistent with the post employment conflict of interest standards. These regulations, in part, establish the standards controlling whether or not the right of first refusal would apply to a given situation.

****END OF SECTION****

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1983/11/28

B. Definitions

One commenter asked that the regulations be revised to make clear that an independent contractor could never be a "special Government employee" and another asked that it be made clear that a consultant could come within the definition. The definition of "special Government employee" has incorporated the essence of such recommendations.

One commenter asked for technical clarifications of the term "Government employee" and questioned the appropriateness of applying the "supervised by" requirement, incorporated by reference to 5 U.S.C. 2104 and 2105, to that term. The Director, OGE, does not consider that the "supervised by" requirement found in 5 U.S.C. 2104 and 2105 contemplates direct supervision by the appointing official in order to find one to be an "officer" or "employee" as defined in sections 2104 and 2105; rather, the requirement encompasses supervision in the broader sense by Federal employees within the department or agency within which they serve.

****END OF SECTION****

C. Restrictions on Any Former Government Employee's Acting as Representative as to a Particular Matter in Which the Employee Personally and Substantially Participated

For purposes of Sec. 737.5(b)(3), the act of conveying material to the United States in connection with a formal proceeding or application may be deemed to constitute an "appearance." There was a suggestion in one comment that the scope of this concept be broadened. Another commenter specifically mentioned that the use of the word "appearance" in Example 1 of Sec. 737.5(b)(3) too narrowly construed the meaning of section 207(a) of title 18 U.S.C. OPM considers the provisions to be consistent with the statutory language.

With respect to what constitutes a "particular matter" for purposes of Sec. 737.5(c)(1), one commenter felt that the term should not be deemed to include the formulation of standard terms to be used in contracts to which the Government is a party. The commenter further urged that as to a specific contract, the validity or meaning of standard terms should not be considered as aspects of the particular matter embodied in the contract in which there was substantial participation-but, should be considered merely ancillary under Sec.

737.5(d)(2). Likewise, it was argued that an attorney who passed upon the legality, as opposed to the desirability, of a particular matter's outcome has dealt with only an ancillary aspect of the matter. This same comment was made with respect to Sec. 737.7(b)(3). The recommendation that formulation of standard terms or clauses to be used generally in contracts not be considered a "particular matter" is appropriate under the statute and has been incorporated in the final regulations. OPM considers that advice concerning the validity or meaning of a standard term or clause embodied in a specific contract is an aspect of the "particular matter" and not merely ancillary under Sec. 737.5(d)(2). Moreover, passing upon the legality, as opposed to the desirability, of a particular contract by an attorney does not constitute involvement with an ancillary aspect of a matter but is, rather, involvement which cannot reasonably be separated from the substantive merits of the particular matter. The final regulations do not, therefore, incorporate the recommendation that such involvement be considered merely ancillary.

An objection was raised in one comment as to the formulation of Sec. 737.5(c)(3) with respect to contractual matters. It was urged that involvement in the preliminary dialogue concerning the subject matter of a contract should not be deemed to constitute the same "particular matter" as that embodied in the executed contract. The text of the final regulations has been altered to further refine the concept concerning the relationship of personal participation to the specificity of a particular matter. In order for such participation to rise to the level of participation in a particular matter there must be more than the involvement in mere speculative discussion in the formative stages of a matter.

One commenter asked for more detailed guidance as to when a lawsuit, to which the United States is not a party, may be of direct and substantial interest to the United States or to a particular Federal agency for purposes of Secs. 737.5(c)(5) and 737.11(e). Such guidance will be published through the formal advisory opinion service on a case-by-case basis.

One commenter felt that there should be some indication of the circumstances in which personal participation should not be deemed "substantial" participation. Such guidance is provided in Sec. 737.5(d).

****END OF SECTION****

D. 2-Year Restriction on Any Former Government Employee's Acting as Representative as to a Particular Matter for Which the Employee had Official Responsibility

One commenter felt that an employee should not be considered to have "official responsibility" over that aspect of a particular matter which involves the non-discretionary use of standard contract terms. It was urged that this be considered an ancillary matter under Sec. 737.7(b)(3). OPM believes that if the issue arises in relation to a specific contract then such an aspect would be considered as part of the "particular matter" and not merely ancillary.

One commenter questioned the use of the "actually pending" rule as it is employed in Sec. 737.7(c), and suggested a reformulation of this concept. The concept is accurate as presented; further guidance will be promulgated on a case-by-case basis through the formal advisory opinion service.

It was suggested, correctly, in one comment that the conclusions reached in Example 1 of Sec. 737.7(e) are inconsistent with the rules given in the text. The text of the final regulation has been revised to remove the inconsistency.

****END OF SECTION****

E. 2-Year Restriction on a Former Senior Employee's Assisting in Representing as to a Matter in Which the Employee Participated Personally and Substantially Several Commenters asked for further delineation of permitted activities in the case of a former employee to whom section 207(b)(ii) applies. Such guidance, beyond that presented in the regulations, shall be provided through the formal advisory opinion service.

One commenter inquired as to the propriety of telephone communications during a negotiation, and as to whom such communications should be deemed tantamount to "personal presence." This issue is addressed in Sec. 737.5(b)(3) as it relates to Sec. 737.9. A telephone call would normally constitute a communication, not an appearance, and a Former Senior Employee could give assistance regarding (but could not make) such a call.

****END OF SECTION****

F. 1-Year Restriction on a Former Senior Employee's Transactions With a Former Agency on a Particular Matter, Regardless of Prior Involvement

One commenter urged that the final regulations clearly reflect that the qualifying language of section 207 (d)(2) of the Act, as amended by Pub. L. 96-28, following "1954," in section 207(d)(2)(B), is applicable to both subparagraphs (A) and (B). The final regulations so reflect.

Another comment expressed the view that the section 207(d)(2) exemption is inequitable in that former Senior Employees employed by certain non-profit institutions could not conduct themselves in the same manner permitted former Senior Employees employed by an exempted institution. The Congress drew a clear distinction between those institutions, the employees of which would be exempt from the section 207(c) prohibitions and those who would not. OPM cannot, by regulation, go beyond that which is mandated by law.

Concern was expressed in one comment that the use of the word "hired" in Sec. 737.11 might permit an agency to hire ex-employees as consultants, but not on a product contract basis. It was suggested that the regulations should permit any arrangement in which personal service by an ex-employee is contemplated. The final regulations substitutes "employed" for the word "hired."

One commenter felt that Example 3 of Sec. 737.11(h) unduly broadens the statutory exception for "special knowledge." OPM considers that the example in question reflects a reasonable interpretation of the statute in regard to an area that would not normally create any actual or apparent conflict of interest on the part of a former Senior Employee.

****END OF SECTION****

G. Designations of Separate Statutory Agencies or Bureaus

One commenter felt that the regulations should contain a definition of "bureau," and urged the view that separate divisions within an agency do not fall within the exemption of section 207(e). The regulations contain clear guidance as to those separate statutory bureaus or agencies which qualify for treatment under section 207(e) of title 18 U.S.C. The final regulations further reflect the treatment of a separate and distinct subject matter component of an agency which may be treated separately for section 207(c) purposes. (See Sec. 737.25(d).)

****END OF SECTION****

H. Partners of Present or Former Government Employees

One commenter asked for regulations pursuant to section 207(g) to cover the situation of current employees and their outside partners. The present regulations, however, are limited solely to post employment conflict of interest.

****END OF SECTION****

I. Officials of a State; Officials of Corporations Created by an Act of Congress and Public International Organizations

Greater clarification was requested by one commenter as to whether certain banking institutions and their directors are referred to by the provisions of Sec. 737.23(b)(1). OPM will provide such clarification through the formal advisory opinion service when requested.

Another comment expressed concern about the treatment of former employees who join international organizations. Such former employees, except those serving under the conditions set forth in Sec. 737.23(b)(2), would be subject to the restrictions of the law and these regulations.

****END OF SECTION****

J. Standards and Procedures for Designating Senior Employee Positions Pursuant to 18 U.S.C. 207(d)

Several comments raised technical questions concerning the designation of Senior Employee positions under section 207(d). One commenter asked about the situation of a consultant who voluntarily serves without pay in a position for which a rate of pay above GS-16 is authorized. The situation of a special Government Employee who serves for less than 60 days in each of two or more positions, but for a total of 60 days or more, was also presented. Such specific situations will be the subject of formal advisory opinions when requested.

One comment suggested that the regulations should not define "supervisory responsibility" in terms of the number of employees supervised, but in regard to the significance of the activities involved. The interim as well as the final regulations were drafted to emphasize the latter criteria rather than the former. Additional guidance was promulgated by OPM's memorandum to Designated Agency Ethics Officials dated April 26, 1979.

****END OF SECTION****

K. Administrative Enforcement Proceedings

One comment pointed out that in some cases law enforcement powers are specifically denied to an agency. OPM considers that such situations will have to be addressed on a case by case basis.

Another commenter stated that the regulations should provide, as an alternative to Sec. 737.27, that employees in units for which there is an exclusive representative should have the right of arbitration and to grieve the matters to be covered through the negotiated grievance procedure. The procedures set forth in Sec. 737.27 are applicable only to former Government employees who are alleged to have violated the provisions of 18 U.S.C. 207. The recommended procedure is considered applicable to current rather than former employees and was not, therefore, adopted.

(3) Additional Sections

Sec. 737.13 of the interim regulations published on April 3, 1979, sets forth the standards and procedures to be applied in connection with designations of separate statutory agencies or bureaus within a department or agency for purposes of 18 U.S.C. 207(c). The Director, OGE, has determined that of those recommendations received, certain agencies and bureaus qualify for designation as separate statutory agencies. Such agencies and bureaus are designated in the new Sec. 737.31 of the regulations.

Sec. 737.13 of the final regulations also sets forth the standards and procedures to be applied in connection with the designation of certain agencies, bureaus and offices as separate components within a department or agency for purposes of limiting the application of subsection (c) of 18 U.S.C. 207 pursuant to subsection (d)(1)(C) of that provision. The Director, OGE, has determined that of those recommendations received, certain agencies, bureaus and offices qualify for such designation. They are designated in new Sec. 737.32 of the regulations.

(4) Senior Employee Designations

Interim regulations designating Senior Employee positions within certain departments and agencies were published in the Federal Register on September 25, 1979 (44 FR 55147-55160). Editorial revisions have been made and several erroneous designations have been revoked. The previously published designations re incorporated in new Sec. 737.33. The Senior Employee designations listed in Sec. 737.33 do not constitute all of the designations to be made by the Director, OGE, under the provisions of 18 U.S.C. 207(d)(1)(C). Additional designations for those departments and agencies not listed will be issued in the near future as a separate interim regulation to be incorporated in these regulations upon codification. The effective date of the Senior Employee designations listed in Sec. 737.33 is February 28, 1980. OPM has determined this is a significant regulation for the purposes of E.O. 12044.

(5) Text of Law

For the use of readers in understanding the regulations, the text of Title V of the ethics in Government Act of 1978 is set forth below: The statutory provisions concerning Post Employment Conflict of Interest appear in Title V of the Ethics in Government Act of 1978 (Pub. L. 95-521) as amended by Pub. L. 96-28, the text of which is as follows:

Title V-Post Employment Conflict of Interest

Sec. 501.(a) Section 207 of title 18, United States Code, is amended to read as follows:

"Sec. 207. "Disqualification of Former Officers and Employees;
Disqualification of Partners of Current Officers and Employees

"(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment as ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to"(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) In connection with 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 or the District of Columbia is a party or has a direct and substantial interest, and

"(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

"(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States), by personal presence at any formal or informal appearance before"(1) any department, agency, court, court-martial, or any civil, military, or

naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

"(2) in connection with 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 or the District of Columbia is a party or has a direct and substantial interest, and

"(3) as to (i) which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii) in which he participated personally and substantially as an officer or employee; or

"(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) in this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to"(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

"(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

"(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest- shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

"(d)(1) Subsection (c) of this section shall apply to a person employed"(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

"(B) on active duty as a commissioned officer of a uniformed service assigned to pay grade 0-9 or above as described in section 201 of title 37, United States Code; or

"(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay 0-7 or 0-8, as described in section 201 of title 37, United States Code, may be designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this sub paragraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office Government Ethics in the exercise of his responsibilities under this paragraph.

"(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representations by a former officer or employee, who is"(A) an elected official of a State or local government, or

"(B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) and accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization."

"(e) For purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the

Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

"(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communication solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

"(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States of the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

"(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

"(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning

matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

"(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the extent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court.

No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection."

(b) The item relating to section 207 in the table or sections at the beginning of chapter II of title 18, United States Code, is amended to read as follows:

"207. Disqualification of former officers and employees;
disqualification of partners of current officers and employees."

Applicability

Sec. 502. The amendments made by section 501 shall not apply to those individuals who left Government service prior to the effective date of such amendments or, in the case of individuals who occupied positions designated pursuant to section 207(d) of title 18, United States Code, prior to the effective date of such designation; except that any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation.

Effective Date

Sec. 503. The amendments made by section 501 shall become effective on July 1, 1979. Office of Personnel Management

Beverly M. Jones, Issuance
System Manager.

Accordingly, the Office of Personnel Management is revising Part 737 or Title 5 of the Code of Federal Regulations, to read as follows:

****END OF SECTION****

**PART 737-REGULATIONS CONCERNING POST EMPLOYMENT
CONFLICT OF INTEREST**

Subpart A-General Provisions

Sec. 737.1 Purpose and policy. 737.3 Definitions.

Subpart B-Substantive Provisions

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

737.7 Two-year restriction on any former government employee's acting as representative as to a particular matter for which the employee had official responsibility.

737.9 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.

737.11 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.

737.13 Limitation of restrictions of 18 U.S.C. Sec. 207(c) to less than a whole of a department or agency. 737.15 Exemption for scientific and technological information.

737.17 Exemption for persons with special qualification in a technical discipline. 737.19 Testimony and statements under oath or subject to penalty of perjury. 737.21 Partners of present or former government employees. 737.23 Officials of a State; officials of corporations created by an act of Congress and public international organizations. 737.25 Standards and procedures for designating senior employee positions pursuant to 18 U.S.C. Sec. 207(d). 737.27 Administrative enforcement proceedings. 737.29 Effective date of restrictions. 737.31 Separate statutory agencies; designations. 737.33 "Senior Employee" designations.

Authority: Pub. L. 95-521, 92 Stat. 1862-1863 (5 U.S.C. Appendix), 92 Stat. 1864-1867 (18 U.S.C. 207).

Note.-The following index of paragraphs is provided for the convenience of the reader; this index will not appear in the CFR.

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737.1 Purpose and policy.

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Subpart B-Substantive Provisions

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(d) "Participate personally and substantially".

(1) Basic requirements. (2) Participation on ancillary matters. (3) Role of
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737.7 Two-year restriction on any former government employee's acting as
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(1) Definition. (2) Determining official responsibility. (3) Ancillary matters and
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(c) "Actually pending."

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(e) Measurement of two-year restriction period.

737.9 Two-year restriction on a former senior employee's assisting in
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personally and substantially.

- (a) 18 U.S.C. 207(b)(ii).
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- (g) Application or proposals for funding of research.
- (h) Personal matters.
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737.13 Limitation of restrictions of 18 U.S.C. 207(c) to less than the whole of a department or agency.

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(1) Procedure. (2) Standards. (3) Effect of designation.

737.15 Exemption for scientific and technological information.

(a) Exemption.

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737.17 Exemption for persons with special qualifications in a technical discipline.

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737.19 Testimony and statements under oath or subject to penalty of perjury.

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737.21 Partners of present or former governmental employees.

(a) Scope.

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737.23 Officials of a state; officials of corporations created by an act of Congress and public international organizations.

737.25 Senior employee designations.

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(1) Delegation. (2) Initiation of administrative disciplinary hearing. (3) Adequate notice. (4) Presiding official. (5) Time, date and place. (6) Hearing rights. (7) Burden of proof. (8) Hearing decision. (9) Administrative sanctions. (10) Judicial review. (11) Consultation and review.

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****END OF SECTION****

PART 737-REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST

Subpart A-General Provisions

Sec. 737.1 Purpose and policy.

(a) Authority. Title IV of the Ethics in Government Act of 1978 ("the Act") established the Office of Government Ethics within the Office of Personnel Management ("OPM"). Section 402(a) of the Act provides in part that the Director, Office of Government Ethics ("the Director") shall provide, under the general supervision of OPM, overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency as defined in section 105 of title 5, United States Code, and shall propose, in consultation with the Attorney General, rules and regulations to be promulgated by the President or by OPM. The purpose of this part is to issue regulations recommended by the Director which give content to the restrictions on post employment activity established by title V of the Act (18 U.S.C. 207) for administrative enforcement with respect to former officers and employees of the executive branch; generally to guide agencies in exercising the administrative enforcement authority reflected in section 18 U.S.C. 207(j); to set forth the procedures to be employed in making certain determinations and designations pursuant to the Act; and to provide guidance to individuals who must conform to the law.

Criminal enforcement of the provisions of 18 U.S.C. 207 remains the exclusive responsibility of the Attorney General.

(b) Consultation with the Attorney General. In proposing these regulations, the Director consulted with the Attorney General as to the

content of regulations governing substantive prohibitions as well as other matters. The Attorney General has advised that such regulations are consistent with his opinion as to the interpretation of the Act.

(c) Policy and limitations. These regulations bar certain acts by former Government employees which may reasonably give the appearance of making unfair use of prior Government employment and affiliations.

(1) When a former Government employee who has been involved with a particular matter decides to act as the representative for another person on that matter, such "switching of sides" undermines confidence in the fairness of proceedings and creates the impression that personal influence, gained by Government affiliation, is decisive.

(2) Similarly, when a former high-level employee assists in representing another by personal presence at an appearance before the Government regarding a matter which is in dispute, such assistance suggests an attempt to use personal influence and the possible unfair use of information unavailable to others. Different considerations are involved, however, with respect to assistance given as part of customary supervisory participation in a project funded by a Government contract or grant, since a former employee's knowledge may benefit the project and thus the Government, and regular communications with associates may properly be regarded as inherent in managerial responsibility. Such assistance, when not rendered by personal presence during an appearance, is not covered by the statute.

(3) When a former Senior Employee returns to argue a particular matter to the employee's former agency in the period immediately following the termination of official employment, it appears that Government-based relationships are being used for private ends.

(4) Former officers and employees may fairly be required to avoid such activities in the circumstances specified by statute and in these regulations.

(5) The provisions of 18 U.S.C. 207 do not, however, bar any former Government employee, regardless of rank, from employment with any private or public employer after Government service. Nor do they effectively bar employment even on a particular matter in which the former Government employee had major official involvement except in certain circumstances

involving persons engaged in professional advocacy. Former Government employees may be fully active in high-level supervisory positions whether or not the work is funded by the United States and includes matters in which the employee was involved while employed by the Government. The statutory provisions are not intended to discourage the movement of skilled professionals in Government, to and from positions in industry, research institutions, law and accounting firms, universities and 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 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.

Sec. 737.3 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 737.25 below.)

(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 Sec. 737.5(b).) (2) "Actually Pending": (See Sec. 737.7(c).) (3) "Communicating with Intent to Influence": (See Sec. 737.5(b).) (4) "Direct and Substantial Interest": (See Sec. 737.11 (f).)

(5) "Participate Personally and Substantially": (See Sec. 737.5 (d).)

(6) "Particular Matter Involving a Specific Party or Parties": (See Sec. 737.5(c).)

(7) "Particular Matter" (without parties): (See Sec. 737.11(d).)

(8) "Official Responsibility": (See Sec. 737.7(b).)

(9) "Rate of Pay": (See Sec. 737.25(b)(4).)

****END OF SECTION****

Subpart B-Substantive Provisions

Sec. 737.5 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 Government 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 Sec. 737.19 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.

Example 2: A former employee makes a telephone call to a present employee to discuss a particular matter that is not the subject of a formal proceeding. She has made a communication.

(4) Government visits to others premises. Neither a prohibited appearance nor communication occurs when a former Government employee communicates with a Government employee who, at the instance of the United States, visits or is assigned to premises leased to, or owned or occupied by, a person other than the United States which are or may be used for performance under an actual or proposed contract or grant, when such communication concerns work performed or to be performed and occurs in the ordinary course of evaluation, administration, or performance of the actual or proposed contract or grant.

(5) Elements of "influence" and potential controversy required. Communications which do not include an "intent to influence" are not prohibited. Moreover, acting as agent or attorney in connection with a routine request not involving a potential controversy is not prohibited. For example, the following are not prohibited: a question by an attorney as to the status of a particular matter; a request for publicly available documents; or a communication by a former employee, not in connection with an adversary proceeding, imparting purely factual information. (See also Sec. 737.11(d) below.)

Example 1: A Government employee, who participated in writing the specifications of a contract awarded to Q Company for the design of certain education testing programs, joins Q Company and does work under the contract. She is asked to accompany a company vice-president to a meeting to state the results of a series of trial tests, and does so. No violation occurs when she provides the information to her former agency. During the meeting a dispute arises as to some terms of the contract, and she is called upon to support Q Company's position. She may not do so. If she had reason to believe that the contractual dispute would be a subject of the meeting, she should not have attended.

(6) Assistance. A former employee is not prohibited from providing in-house assistance in connection with the representation of another person.

Example 1: A Government employee administered a particular contract for agricultural research with Q Company. Upon termination of her Government employment, she is hired by Q Company. She works on the matter covered by the contract, but has no direct contact with the Government. At the request of a company vice-president, she prepares a paper describing the persons at her former agency who should be contacted and what should be said to them in an

effort in increase the scope of funding of the contract and to resolve favorably a dispute over a contract clause. She may do so.

(7) Project responses not included. In a context not involving a potential controversy involving the United States no finding of a "intent to influence" shall be based upon whatever influential effect inheres in an attempt to formulate a meritorious proposal or program.

Example 1: The employee of Q Company in the previous example is asked to design an educational testing program, which she does and transmits it to the Government. This is not prohibited despite the fact that her well-designed program may be inherently influential on a question of additional funding under the contract. She may not argue for its acceptance.

(c) "Particular matter involving a specific party parties."

(1) Specific matters vs. policy matters. The prohibitions of subsections (a) and (b) of 18 U.S.C. 207, are based on the former Government employee's prior participation in or responsibility for a "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. Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an insolatable transaction or related set of transactions between identifiable parties. Rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application is not such a matter. Therefore, a former Government employee may represent another person in connection with a particular matter involving a specific party even if rules or policies which he or she had a role in establishing are involved in the proceeding.

Example 1: A Government employee formulated the policy objectives of an energy conservation program. He is not restricted from later representing a university which seeks a grant or contract for work emerging from such a program.

Example 2: A Government employee reviews and approves a specific city's application for Federal assistance for a renewal project. After leaving Government service, she may not represent the city in relation to that project.

Example 3: An employee is regularly involved in the formulation of policy, procedures and regulations governing departmental procurement and acquisition functions. Participation in such activities does not restrict the employee after leaving the Government as to particular cases involving the application of such policies, procedures, or regulations.

Example 4: An employee of the Office of Management and Budget participates substantially on the merits of a decision to reduce the funding level of a program, which has the effect of reducing the amount of money which certain cities receive to conduct youth work programs. After leaving the Government she may represent any of the cities in securing funds for its youth program, since her participation was in connection with a program, not a particular matter involving specific parties.

Example 5: An agency attorney participates in drafting a standard form contract and certain "standard terms and clauses" for use in future contracts.

He is not thereafter barred from representing a person in a dispute involving the application of such a "standard term or clause" in a particular contract in which he did not participate as a Government employee.

(2) Technical matters. In connection with technical work, participation in projects generally involving one or more scientific or engineering concepts, in feasibility studies, or in proposed programs prior to the formulation of a contract will not restrict former Government employees with respect to a contract or specific programs entered into at a later date.

Example 1: A Government employee participates significantly in formulating the "mission need" of a project pursuant to OMB Circular No. A-109, and the award of a contract to Z Company, the purpose of which is to propose alternative technical approaches. He is not barred, after leaving Government service, from representing Q Company which later seeks a contract to manufacture one of the systems suggested by the Z Company.

Example 2: A Government employee, who has worked for years on the design of a new satellite communications system, joins C Company. Later, the Government issues a "request for proposals" ("rfp") to construct the new system, which is circulated generally to industry. The employee proposes to act as C Company's representative in connection with its anticipated proposals for the contract. He may do so. The satellite contract became a particular matter when the RFP was being formulated; it would ordinarily not become one involving a

specific party or parties until initial proposals or indications of interest therein by contractors were first received. Moreover, if the employee's work for C Company were limited to the formulation and communication of a proposal in response to the RFP, it would not be prohibited to the extent it involved a communication for the purpose of furnishing scientific or technological information to the Government, exempt under 18 U.S.C. 207(f). See Sec. 737.15 below. (See paragraph (3) below as to a case where the employee's own participation may cause a different result.)

(3) Relationship of personal participation to specificity. In certain cases, whether a matter should be treated as a "particular matter involving specific parties" may depend on the employee's own participation in events which give particularity and specificity to the matter in question. For example, if a Government employee (i) personally participated in that stage of the formulation of a proposed contract where significant requirements were discussed and one or more persons was identified to perform services there under and (ii) actively urged that such a contract be awarded, but the contract was actually awarded only after the employee left, the contract may nevertheless be a particular matter involving a specific party as to such former Government employee.

Example 1: A Government employee advises her agency that it needs certain work done and meets with private firm X to discuss and develop requirements and operating procedures. Thereafter, the employee meets with agency officials and persuades them of the need for a project along the lines discussed with X. She leaves the Government and the project is awarded by other employees to firm X. The employee is asked by X to represent it on the contract. She may not do so.

(4) The same particular matter must be involved. The requirement of a "particular matter involving a specific party" applies both at the time that the Government employee acts in an official capacity and at the time in question after Government service. The same particular matter may continue in another form or in part. In determining whether two particular matters are the same, the agency should consider the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information, and the continuing existence of an important Federal interest.

Example 1: A Government employee was substantially involved in the award of a long-term contract to Z Company for the development of alternative energy

sources. Six years after he terminates Government employment, the contract is still in effect, but much of the technology has changed as have many of the personnel. The Government proposes to award a "follow on" contract, involving the same objective, after competitive bidding. The employee may represent Q Company in its proposals for the follow-on contract, since Q Company's proposed contract is a different matter from the contract with Z Company. He may also represent Z Company in its efforts to continue as contractor, if the agency determines on the basis of facts referred to above, that the new contract is significantly different in its particulars from the old. The former employee should first consult his agency and request a written determination before undertaking any representation in the matter.

Example 2: A Government employee reviewed and approved certain wiretap applications. The prosecution of a person overheard during the wiretap, although not originally targeted, must be regarded as part of the same particular matter as the initial wiretap application. The reason is that the validity of the wiretap may be put in issue and many of the facts giving rise to the wiretap application would be involved. Other examples: See Sec. 737.5(b)(1), Example 1, and (c), Example 2.

(5) United States must be a party or have an interest. The particular matter must be one in which the United States is a party, such as in a judicial or administrative proceeding or a contract, or in which it has a direct and substantial interest. The importance of the Federal interest in a matter can play a role in determining whether two matters are the same particular matter.

Example 1: An attorney participated in preparing the Government's antitrust action against Z Company. After leaving the Government, she may not represent Z Company in a private antitrust action brought against it by X Company on the same facts involved in the Government action. Nor may she represent X Company in that matter. The interest of the United States in preventing both inconsistent results and the appearance of impropriety in the same factual matter involving the same party, Z Company, is direct and substantial. However, if the Government's antitrust investigation or case is closed, the United States no longer has a direct and substantial interest in the case.

Example 2: A member of a Government team providing technical assistance to a foreign country leaves and seeks to represent a private contractor in making arrangements with the Government to perform the same service. The proposed new contract may or may not be considered a separate matter, depending upon

whether the United States has a national interest in maintaining the original contract. The agency involved must be consulted by the former employee before the representation can be undertaken.

(d) "Participate personally and substantially."

(1) Basic requirements. The restrictions of section 207(a) apply only to those matters in which a former Government employee had "personal and substantial participation," exercised "through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise." To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the former Government employee in the matter. "Substantially," means that the employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantially should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. It is essential that the participation be related to a "particular matter involving a specific party." (See paragraph (c) of this section.) (See also Sec. 737.9(f) below.)

Example 1: If an officer personally approves the departmental budget, he does not participate substantially in the approval of all items contained in the budget. His participation is substantial only in those cases where a budget item is actually put in issue. Even then, the former Government employee is not disqualified with respect to an item if it is a general program rather than a particular matter involving a specific party. The former Government employee may, however, have official responsibility for such matters. (See Sec. 737.7(b).)

Example 2: A Government lawyer is not in charge of, nor has official responsibility for a particular case, but is frequently consulted as to filings, discovery, and strategy. Such an individual has personally and substantially participated in the matter.

(2) Participation on ancillary matters. An employee's participation on subjects not directly involving the substantive merits of a matter may not be "substantial," even if it is time-consuming. An employee whose responsibility is the review of a matter solely for compliance with administrative control or budgetary considerations and who reviews a particular matter for such a

purpose should not be regarded as having participated substantially in the matter, except when such considerations also are the subject of the employee's proposed representation. (See Sec. 737.7(b)(3) below.) Such an employee could theoretically cause a halt in a program for noncompliance with standards under his or her jurisdiction, but lacks authority to initiate a program or to disapprove it on the basis of its substance.

(3) Role of official responsibility in determining substantial participation. "Official responsibility" is defined in Sec. 737.7(b)(1). "Personal and substantial participation" is different from "official responsibility." One's responsibility may, however, play a role in determining the "substantially" of an employee's participation. For example, ordinarily an employee's forbearance on a matter is not substantial participation. If, however, an employee is charged with responsibility for review of a matter and action cannot be undertaken over his or her objection, the result may be different. If the employee reviews a matter and passes it on, his or her participation may be regarded as "substantial" even if he or she claims merely to have engaged in inaction.

(e) Agency responsibility in complex cases. In certain complex factual cases, the agency with which the former Government employee was associated is likely to be in the best position to make a determination as to certain issues, for example, the identity or existence of a particular matter. Designated agency ethics officials should provide advice promptly to former Government employees who make inquiry on any matter arising under these regulations.

Sec. 737.7 Two-year restriction on any former Government employee's acting as representative as to a particular matter for which the employee had official responsibility.

(a) Basic prohibition of 18 U.S.C. 207(b)(i). No former Government employee, within two years after terminating employment by the United States, 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 Government matter involving a specific party (3 if such matter was actually pending under the employee's responsibility as an officer or employee within period of one year prior to the termination of such responsibility.

(b) "Official responsibility."

(1) Definition. "Official responsibility" is defined in 18 U.S.C. 202 as, "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government actions."

(2) Determining official responsibility. Ordinarily, the scope of an employee's "official responsibility" is determined by those areas assigned by statute, regulation, Executive Order, job description or delegation of authority. All particular matters under consideration in an agency are under the "official responsibility" of the agency head, and each is under that of any intermediate supervisor having responsibility for an employee who actually participates in the matter within the scope of his or her duties.

(3) Ancillary matters and official responsibility. "Administrative" authority as used in the foregoing definition means authority for planning, organizing and controlling matters rather than authority to review or make decisions on ancillary aspects of a matter such as the regularity of budgeting procedures, public or community relations aspects, or equal employment opportunity considerations. Responsibility for such an ancillary consideration does not constitute responsibility for the particular matter, except when such a consideration is also the subject of the employee's proposed representation.

Example 1: An agency's comptroller would not have official responsibility for all programs in the agency, even though she must review the budget, and all such programs are contained in the budget.

Example 2: Within two years after terminating employment, an agency's former comptroller is asked to represent Q Company in a dispute arising under a contract which was in effect during the Comptroller's tenure. The dispute concerns an accounting formula, under the contract, a matter as to which a subordinate division of the comptroller's office was consulted. She may not represent Q Company on this matter.

(4) Knowledge of matter pending required. In order for a former employee to be barred from representing another as to a particular matter, he or she need not have known, while employed by the Government, that the matter was pending under his or her official responsibility. However, the former employee is not subject to the restriction unless at the time of the proposed representation of another, he or she knows or learns that the matter had been under his or her responsibility. Ordinarily, a former employee who is asked to represent another on a matter will become aware of facts sufficient to suggest the relationship of

the prior matter to his or her former agency. If so, he or she is under a duty to make further inquiry, including direct contact with an agency's designated ethics official where the matter is in doubt.

(5) Self-disqualification. A former employee cannot avoid the restrictions of this section on the ground by self-disqualification with respect to a matter for which he or she otherwise had official responsibility. However, self-disqualification is effective to eliminate the restriction of Sec. 207(a).

(c) "Actually pending." "Actually pending" means that the matter was in fact referred to or under consideration by persons within the employee's area of responsibility, not that it merely could have been.

Example 1: A staff lawyer in a department's Office of General Counsel is consulted by procurement officers on the correct resolution of a contractual matter involving Q Company. The lawyer renders an opinion resolving the question. The same legal question arises later in several contracts with other companies, but none of the disputes with such companies is referred to the Office of the General Counsel. The General Counsel has official responsibility for the determination of the Q Company matter. The other matters were never "actually pending" under that responsibility, although as a theoretical matter, such responsibility extended to all legal matters within the department.

(d) Other essential requirements. All other requirements of the statute must be met before the restriction on representation applies. The same considerations apply in determining the existence of a "particular matter involving a specific party," a representation in an "appearance," or "intent to influence," and so forth as set forth under Sec. 737.5 above.

Example 1: During her tenure as head of an agency, an officer's subordinates undertook major changes in agency enforcement standards involving occupational safety. Eighteen months after terminating Government employment, she is asked to represent Z Company which believes it is being unfairly treated under the enforcement program. The Z Company matter first arose on a complaint filed after the agency head terminated her employment. She may represent Z company because the matter pending under her official responsibility was not one involving "a specific party." (Moreover, the time-period covered by 18 U.S.C. 207(c) has elapsed.)

(e) Measurement of two-year restriction period. The statutory two-year period is measured from the date when the employee's responsibility in a particular area

ends, not from the termination of Government service, unless the two occur simultaneously. The prohibition applies to all particular matters subject to such responsibility in the one-year period before termination of such responsibility.

Example 1: The Director, Import/Export Division of a Agency retires after 26 years of service and enters private industry as a consultant. He will be restricted for two years with respect to all matters which were actually pending under his official responsibility in the year before his retirement.

Example 2: An employee transfers from a position in A Agency to a position in B Agency, and she leaves B Agency for private employment 9 months later. In 15 months she will be free of restriction insofar as matters which were pending under her responsibility in A Agency in the year before her transfer. She will be restricted for two years in respect of B Agency matters which were pending in the year before her departure for private employment.

Sec. 737.9 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.

(a) Basic prohibition of 18 U.S.C. 207(b)(ii). No former Senior Employee (see Sec.737.3(6)), within two years after terminating employment by the United States, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person by personal presence at any formal or informal appearance, (1) before the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter he or she participated personally and substantially.

(b) Limitation to "representational" assistance by "personal presence" at an appearance. Section 207(b)(ii) is limited to assistance "in representing" another person by "personal presence" at an "appearance" before the United States. Different in scope from sections 207(a) and 207(b)(i), it does not apply to assistance in connection with an oral or written communication made with an intent to influence which does not involve an appearance. Nor does it bar assistance in preparation for either a formal or informal personal appearance or an appearance by written submission in a formal proceeding where the former employee is not personally present before the Government or a Government employee. The provision is designed to prevent the former Senior Employee from playing an auxiliary role during a negotiation proceeding or similar transaction

with the Government so that he or she does not appear to be lending personal influence to the resolution of a matter and cannot do so in fact.

Example 1: A former Senior Employee makes suggestions as to the content of a letter to be sent to the Government on a matter in which he had participated. No violation occurs.

(c) Managerial and other off-scene assistance. The statute does not prohibit a former Senior Employee's advice and assistance to his or her organization's representatives which does not involve his or her personal presence at an appearance before the Government. The former Senior Employee's preparation of documents to be presented in any formal or informal proceeding does not constitute personal presence at an appearance, even where submission of such a document might technically constitute an appearance.

Example 1: A former Senior Employee attends a hearing on a matter in which she had participated personally and substantially while in the Government. She speaks with the representative of a private party during the hearing. A violation occurs if the former Senior Employee lends assistance to the representative in that conversation.

Example 2: A Senior Justice Department lawyer personally works on an antitrust case against Z Company. After leaving the Department, she is asked to discuss legal strategy with lawyers representing Z Company on that same antitrust case, to write portions of a brief and to direct the research of the staff working on the case. Any such aid would not be prohibited by the statute, but would likely be prohibited by professional disciplinary rules.

(d) Representational assistance. The statute seeks to prevent a former Senior Employee from making unfair use of his or her prior government position by prohibiting all forms of assistance in the representation of another when personally present at an appearance, including giving advice as to how the presentation in an appearance should be conducted, supplying information, participating in drafting materials, or dealing with forensic or argumentative matters (such as testimony, methods of persuasion, or strategy of presentation).

(e) Measurement of restriction period. The statutory two-year period is measured from the date of termination of employment in the Senior Employee

position held by the former employee when he or she participated personally and substantially in the matter involved. (cf. Sec. 737.7(e))

(f) Other Essential Requirements. All conditions of the statutory prohibition must be met. Specifically, the former employee, (1) must have been a "Senior Employee," (2) who "participated personally and substantially"

(See Sec. 737.5(d) above) in (3) a "particular matter involving a specific party." (See subpart Sec. 737.5(c) above.)

(g) General Examples:

Example 1: A Senior Federal Trade Commission Employee, an economist by profession, participates in an investigation involving X Company, and a proceeding is commenced against X Company based on the investigation. After leaving the Commission, he offers to serve as a consultant to the lawyers for X Company on certain economic matters involved in the proceeding. He attends the proceeding and at the close of each day, meets in the lawyers' office to advise them. Such conduct violates the statute.

Example 2: A Senior Employee of the Department of the Treasury participates in a number of projects with universities and financial research institutions funded by Government grants. After leaving the Government, she becomes dean of a graduate school of business which performs work under a number of such grants. She may, in the discharge of her duties, supervise research and advise as to how funds under such a contract should be allocated, whether or not these matters are, as is likely, communicated to her former Department by the graduate school's representatives. (See Sec. 737.11.)

Example 3: A Senior Defense Department official participated personally and substantially in a contract award to F Company for fighter planes. After leaving the Department, the former official goes to work for F Company. Subsequently, F Company desires to renegotiate prices and a pension provision on the fighter plane contract, matters in which dispute is anticipated. The former official could not attend a meeting with Government employees at which such matters will be discussed and give assistance to those representing F Company in the negotiations. He could generally render advice as long as he remained absent from the negotiations.

Example 4: A Senior Justice Department lawyer participated in an antitrust case against Q Company, which is represented by Y law firm. Immediately after leaving the Department, she goes to work with Y law firm, and assists at a trial representing Q Company in a different antitrust case, not involving the allegations in the Government case. Such assistance would not be barred because it does not occur in connection with the same particular matter.

Example 5: A Senior Employee of the Department of Health and Human Services leaves to take a university position. The former official's new duties include various HHS contracts which the university holds. Some of the contracts were awarded by a division within HHS which was under her official responsibility. She is not barred from such contracts, because the restriction applies only those matters in which she had participated personally and substantially, not to those matters for which she had official responsibility. Note, however, that any participation by her as a representative would be barred by 18 U.S.C. 207(b)(i) as described in Sec. 737.7 above. (But see Sec. 737.11.)

Example 6: A Senior scientist with the Food and Drug Administration was personally and substantially involved in a licensing proceeding concerning a specific drug. After leaving the FDA, he is employed by the manufacturer of the drug. There he engages in research, indicating that the drug is safe and effective, which his employer later presents to FDA in connection with the proceeding. He assists during this presentation. Such assistance would normally be restricted but may be allowed to the extent that the former official is furnishing scientific information to the Government. (See 18 U.S.C. 207(f) and Sec. 737.15 below.)

Example 7: A former Senior Employee of the Federal Communications Commission leaves the agency to join a graduate school faculty. In one of his courses, which from time to time includes Government employees, he discusses, unfavorably to the Commission, a specific licensing case in which he was personally and substantially involved. The restriction does not apply because the conduct does not occur in connection with any representational activities. Sec. 737.11 One-year restriction on a former senior employee's transactions with former agency on a particular matter, regardless of prior involvement.

(a) Basic prohibition of 18 U.S.C. 207(c). For a period of one year after terminating employment by the United States, no former Senior Employee (other than a special Government employee who serves for fewer than sixty days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise

represent, anyone in any formal or informal appearance before, or with the intent to influence, make any written or oral communication on behalf of anyone to (1) his or her former department or agency, or any of its officers or employees, (2) in connection with any particular Government matter, whether or not involving a specific party, which is pending before such department or agency, or in which it has a direct and substantial interest.

(b) Transactions exempted from the basic prohibition of 18 U.S.C. 207(c). The prohibition set forth above shall not apply to an appearance, a communication, or representation by a former Senior Employee, who is:

(1) an elected official of a State or local government, acting on behalf of such government, or

(2) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in Section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital or organization.

Example 1: A former Senior Employee of the Federal Highway Administration is appointed to the position of Secretary of Transportation for the State of Kansas. He would not be prohibited from transacting business with his former agency concerning new matters on behalf of the State. He would, however, be restricted as to 207(a) and 207(b) matters.

Example 2: A former Senior Employee of the Department of Housing and Urban Development establishes a consulting firm and is engaged by the City of Los Angeles to aid it in procuring a particular grant. He may not represent Los Angeles before his former Department because his "principal occupation or employment" is not with such city.

Example 3: A former Senior Employee of the Department of Education founds a vocational school for the training of legal paraprofessionals and associated staff. He desires to communicate with officials at his former Department for the purpose of establishing a program of assistance to such institutions. He may not do so, since the vocational school is not an "accredited, degree granting institution of higher education."

(c) No prior involvement required. The prohibition contained in this section applies without regard to whether the former Senior Employee had participated in, or had responsibility for, the particular matter and includes matters which first arise after the employee leaves Government service. The section aims at the possible use of personal influence based upon past Governmental affiliations to facilitate the transaction of business.

(d) Specific parties unnecessary. The particular matter in which the former Senior Employee proposes to act before his or her former agency need not be one "involving specific parties," and thus is not limited to disputed proceedings or contracts in which a party has already been identified. However, the restriction does not encompass every kind of matter, but only a particular one similar to those cited in the statutory language, i.e., any judicial or other proceeding, application, request for a ruling or determination, contract, controversy, investigation, charge, accusation, or arrest. Rulemaking is specifically included. Thus such matters as the proposed adoption of a regulation or interpretive ruling, or an agency's determination to undertake a particular project or to open such a project to competitive bidding are covered. Not included are broad technical areas and policy issues and conceptual work done before a program has become particularized into one or more specific projects. The particular matter must be pending before the agency or be one in which the agency has a "direct and substantial interest."

(Note.-Each post employment activity in the examples in this section is assumed to take place within one year of termination of Government employment.)

Example 1: A Senior Employee of the Department of Health and Human Services leaves Government employment for private practice, and shortly thereafter telephones a former associated urging that the Department (a) adopt a new procedure to put a ceiling on hospital costs; (b) not adopt a particular rule proposed for drug testing; and (c) oppose a bill pending in Congress relating to such drug testing. He is prohibited from attempting to influence his former co-worker on any of these matters. The first, not yet pending, is of interest to the Department; the second is pending in the Department; and the third is pending elsewhere, and is of interest to the Department. Note that the former Senior Employee may, however, communicate the same views to Congress, other agencies, the public or the press.

Example 2: A recently retired Senior Employee of the Department of Defense believes that the Department's general emphasis on manned aircraft is not in the national interest. After his departure, he may continue to argue the point to the Department.

(e) Element of controversy or influence required. The prohibition on acting as a representative or attempting to influence applies to situations in which there is an appreciable element of actual or potential dispute or an application or submission to obtain Government rulings, benefits or approvals, and not to a situation merely involving, for example: the transmission or filing of a document that does not involve an application for Government benefit, approval or ruling; a request for information; purely social or informational communications; or those required by law or regulations (in situations other than adversary proceedings.) Each agency should, after consulting with the Director or the Attorney General, as appropriate, give guidance on the kinds of applications, filings and other matters which are not prohibited by section 207(c).

Example 1: A former Senior Employee of the Internal Revenue Service prepares and mails a client's tax return. This is not a prohibited act. Should any controversy arise in connection with the tax return, the former employee may not represent the client, but may be called upon to state how the return was prepared.

Example 2: A former Senior Employee of the Securities and Exchange Commission prepared and transmitted for filing to the Commission a client's annual report on form 10-K. This is not a violation, because the 10-K is a disclosure report, not intended to obtain a Government benefit or ruling.

Example 3: A former Senior Employee of the Securities and Exchange Commission becomes executive vice-president of a major industrial corporation, registered under the Securities Exchange Act of 1934. Pursuant to Commission regulations, the officers of the corporation are required to sign certain filings on behalf of the corporation, which are transmitted to the Commission. The employee may review, concur or request changes in, and sign any such filing required to be transmitted to the Commission.

(f) Agency activity or interest in matter. The restriction applies to the former employee's contacts with his or her former agency in connection with a matter before or of "direct and substantial interest" to the agency.

Example 1: A former Senior Employee of the Securities and Exchange Commission is asked to represent Z Company in a new matter before the Commission, one in which the former employee had no prior involvement. He may not do so.

Example 2: The matter in the foregoing example is referred to the Department of Justice for prosecution, and the former employee is asked for the first time to represent Z Company in the criminal proceeding. The matter is likely to be of direct and substantial interest to the Commission. If so, the former employee may not communicate with the Commission in the matter. However, the former Senior Employee may communicate with the Commission in order to determine whether it asserts a direct and substantial interest in the criminal proceeding. In the event of a negative answer to the question, the former Senior Employee may communicate with the Commission.

Example 3: In connection with an entirely new matter a former Senior Employee of the Securities and Exchange Commission undertakes the representation of Z Company in private litigation brought by Q Company, (e.g., a private action arising under the Securities Exchange Act of 1934). Before the suit was commenced, there was no actual expression of interest by the Commission in the matter. As the litigation develops, an important question of statutory interpretation is raised, and the Commission files a brief as *amicus curiae* (friend of the court). The former Senior Employee may respond to the brief and need not withdraw from representation of Z Company, but he may not otherwise communicate with the Commission in the matter. If the Commission were to commence a proceeding or investigation again, Z Company on the basis of the same facts involved in the private litigation, the former employee could continue his representation in the private litigation, but could not represent Z Company in the Commission's proceeding until after the expiration of one year from the termination of his employment with the Commission.

(Note.-Where an agency becomes a party to a proceeding subsequent to its commencement, the question whether a former Senior Employee may continue representation should ordinarily be decided by the court on a motion for disqualification in the particular circumstances.)

Example 4: In connection with a new matter, a former Senior Employee of the Federal Food and Drug Administration, since retired to private law practice, is asked to consult and assist in the preparation of briefs to be filed with the Administration on a new particular matter. He may do so, but he

should not sign briefs or other communications or take any other action that might constitute an appearance.

(g) Application or proposals for funding of research. In connection with any application or proposal for Government funding or research, the restrictions of this section do not prevent a former Senior Employee from assuming responsibility for the direction or conduct of such research and from providing scientific or technological information to the Senior Employee's former agency regarding such research. The former Senior Employee may not, however, submit the application on behalf of the applicant or argue for its approval or funding by the agency.

Example 1: A former Senior Employee of the National Institute of Health (NIH), employed by a non-exempt research institute, prepares an application to NIH for a research contract. The application is submitted to NIH by the institute and lists the Senior Employee as principal investigator. The Senior Employee does not violate 18 U.S.C. 207(c) by preparing the application or by being listed as principal investigator, since these are not representational activities. He may also sign an assurance to NIH, as part of the application, that he will be responsible for the scientific and technical direction and conduct of the project if an award is made. He may also communicate with NIH to provide scientific or technical information on the application, including presentation to NIH personnel at the research site, so long as he does not argue for approval or funding of the application.

(h) Personal matters. Unlike the provisions of subsections 207(a) and (b) the restrictions of this section apply when the former Senior Employee seeks to represent himself or herself. However, they do not apply to appearances or communications concerning matters of a personal and individual nature, such as personal income taxes, pension benefits, or the application of any provision of these regulations to an undertaking proposed by a Senior Employee. (See 18 U.S.C. 207(i).) A former Senior Employee may also appear pro se (on his or her own behalf) in any litigation or administrative proceeding, involving the individual's former agency. The former employee may not contact his or her former agency in order to secure an item of business, except for (1) discussions in contemplation of being employed by the agency as a consultant or otherwise; or (2) a proposal to furnish scientific or technological information to the Government.

Example 1: Any former Government Employee may contact his or her former agency to seek information or determinations as to matters in question under

these regulations or under 18 U.S.C. 207, such as whether a particular matter is considered to have been under the employee's official responsibility, whether a matter is one in which the agency asserts a direct and substantial interest, or whether a current matter is considered to be the same as that in which the employee had been involved.

(i) Statements based on special knowledge. The restrictions of the section do not prevent a former Senior Employee from making or providing a statement, which is based on the former Senior Employee's own special knowledge in the particular area that is the subject matter of the statement, provided that no compensation is thereby received, other than that regularly provided by law or regulation for witnesses. (See 18 U.S.C. 207(i).)

Example 1: A former Senior Employee may make any statement of his own views to his former agency on any subject matter in which he has no substantial pecuniary interests, acting on his own behalf.

Example 2: A former Senior Employee is called by his successor at the agency for the purpose of eliciting some information on a matter in which he had been involved in an official capacity. His response is not prohibited.

Example 3: A former Senior Employee may recommend an individual to her former agency for employment, based on her own personal knowledge of the individual's qualifications and character.

(j) Measurement of one-year restriction period. The statutory one-year period is measured from the date when the individual's responsibility as a Senior Employee in a particular agency ends, not from the termination of Government service, unless the two occur simultaneously. (See 737.7(e).)

Sec. 737.13 Limitation of restrictions of 18 U.S.C. Sec. 207(c) to less than that whole of a department or agency.

(a) Authority. There are two methods by which the application of the one-year "cooling-off" prohibition of 18 U.S.C. Sec. 207(c) may be limited to less than the entirety of a department or agency. First, 18 U.S.C. 207(e) provides that the Director may by rule designate as "separate" a statutory agency or bureau which exercises functions that are distinct and separate from the remaining functions of the parent department or agency of which it is part. (See 737.31) Second, under the provisions of 18 U.S.C. 207(d)(1)(C), the Director may restrict the application of the prohibition as to a former employee

(other than one who served in an Executive Level position or at a uniformed service grade level of 0-9 and above) insofar as it affects his or her communications with persons in an unrelated agency or bureau within his former parent department or agency which has separate and distinct subject matter jurisdiction from the agency or bureau in which he or she served. (See 737.32)

(b) Distinctions between the 18 U.S.C. 207(e) and 207(d)(1)(C) provisions. (1) The authority granted by 18 U.S.C. 207(e) is applicable solely to a separate statutory agency or bureau, that is, one created by statute or the functions of which are expressly referred to by statute in such a way that it appears that Congress intended that its function were to be separable. A determination made under this 18 U.S.C. 207(e) does not, however, benefit former heads of the separate statutory agency or bureau. Such a determination does, however, work to the benefit of other employees at Executive Level or at uniformed service grade level of 0-9 or above. (2) The determination made pursuant to Sec. 207(d)(1)(C) is intended to provide similar recognition of separability where the subordinate agency or bureau has been administratively created. A determination of such separability does inure to the benefit of the head of the separate component if he is a Senior Employee designated by the Director. However, the determination is not beneficial to persons, including the head of a separate component, in positions at Executive Level or serving at uniformed service grade level of 0-9 above.

(c) Separate Statutory Components

(1) Procedure. Each agency shall notify the Director, in writing, of any separate statutory agency or bureau which it desires to submit for such designation under 18 U.S.C. 207(e), providing:

(i) A description of the functions of the agency or bureau, indicating the basis on which such functions are claimed to be distinct and separate from the parent organization;

(ii) The separate statutory basis of the agency or bureau; and

(iii) Identification of those positions in the parent agency with official responsibility for supervision of such separate statutory agency or bureau.

(2) Standards. A parent agency may propose as a "separate" statutory agency an agency or bureau (i) created specifically by statute, (ii) the

functions of which are expressly referred to by statute in such a way as to indicate that a separate component was intended or (iii) which is the successor to either of the foregoing; but a decision as to the sufficiency of the statutory authority as well as the separability of functions shall be reserved to the Director, OGE.

(3) Effect of designation. If a subordinate part of an agency is designated as "separate" by the Director, then Senior Employees of such agency and those of the parent agency are not subject to the restrictions of section 207(c) remains applicable to the former head of a "separate" subordinate agency and to former Senior Employees of the parent agency whose official responsibility included supervision of the subordinate agency.

Example 1: A former Senior Employee of the Product Agency in Executive Department leaves and joins a law firm which represents Q Corporation. Product Agency has been designated by the Director as separate from Executive Department. The former employee is not restricted from representing the Q Corporation on a new matter before the Executive Department.

(d) Separate Nonstatutory Components

(1) Procedure. Each agency may notify the Director, in writing, of a component agency, bureau or office having separate and distinct subject matter jurisdiction which it desires to submit for designation under 18 U.S.C. 207(d)(1)(C), providing:

(i) A description of the subject matter jurisdiction of such component, indicating the basis on which such jurisdiction is claimed to be separate and distinct from certain other agencies, bureaus and offices of the parent agency;

(ii) A description of the nature of the connections and interactions between such component and certain other agencies, bureaus or offices of the parent agency indicating the basis on which the component is claimed to be unrelated;

(iii) A statement of the basis on which it is claimed that no potential exists for use by former Senior Employees of such component of undue influence or unfair advantage with respect to the named other agencies, bureaus or offices of the parent agency, based on past Government service; and

(iv) Identification of those organizational units of the parent agency having administrative or operational authority over such component agency, bureau or office.

(2) Standards.

(i) A parent agency may propose as "separate" from other parts of a department or agency any agency or bureau having subject matter jurisdiction separate and distinct from one or more other portions of the department or agency accompanied by a showing that there would be no potential for use of undue influence or unfair advantage based upon past Government service if a former employee of one such subordinate agency or bureau communicated with employees of such other portions of the department or agency.

(ii) A determination under this section rests solely with the Director, OGE, and is available only for those subordinate components which would but for the lack of a statutory basis, qualify for separate agency treatment under 18 U.S.C. 207(e).

(iii) Where one component has supervisory authority over another, the two components may not be considered separate and distinct for purposes of this section.

(iv) The requirement of "separate and distinct subject matter jurisdiction" may be met in at least two ways. First, the substantive areas of coverage may be distinct. For example, an office or bureau within the parent agency may handle only maritime matters. Second, the regional area of coverage may be different. For example, one regional office may, on appropriate facts, be considered separate and distinct from other regional offices and from the parent agency- except for the bureau or office in the parent agency which is responsible for its supervision.

(v) It is necessary to specify the "unrelated agency or bureau within the same department or agency" as to which it is recommended that post employment communication be permitted. For example, one bureau may involve a subject matter distinct from some, but not all, parts of the parent department. Attempts to fractionalize a department could, however, become deeply complicated and involve difficult judgments and fact-finding. OGE will not usually act on such cases, and submissions should be confined to relatively clear cases.

(3) Effect of determination. If a component agency, bureau or office is determined to be separate by the Director, then Senior Employees of such component are not subject to the restrictions of 18 U.S.C. 207(c) and Sec. 737.11 as to the remaining agencies, bureaus or offices of the parent agency (except certain such agencies, bureaus or offices as specified in Sec. 737.32)- except that the prohibition of section 207(c) and Sec 737.11 shall remain applicable (i) to those Senior Employees of such component who served in positions designated by 18 U.S.C. 207(d)(1)(A) and (B) and (ii) to former Senior Employees of such component with respect to the parent agency (as defined in Sec. 737.13(e)). Such limited application of 18 U.S.C. 207(c) may be available for the head of a separate component, unlike the limitation of 18 U.S.C. 207(e), as determined by the Director.

Example 1: In the Department of Justice, while the Antitrust Division may be "separate" from other Divisions, it is not separate from the immediate office of the Attorney General.

Sec. 737.15 Exemption for scientific and technological information.

(a) Exemption. The making of communications solely for the purpose of furnishing scientific or technological information pursuant to agency procedures is exempt from all prohibitions and restrictions set forth in Secs. 737.5-737.11 of these regulations (subsections (a), (b), and (c) of 18 U.S.C. 207). This exemption allows the free exchange of such information regardless of a former Government employee's prior participation in or responsibility for the matter. The former Senior Employee should not argue for the acceptance of a proposal. The exemption is not limited communications constituting the furnishing of information, but includes those "for the purpose of" doing so. No violation occurs when, for example, a former Government employee working on a project makes contact to determine the kind and form of information required, or the adequacy of information already supplied, so long as agency procedures are satisfied.

Example 1: A project manager, regardless of prior involvement in a particular matter, may contact the Government to determine deficiencies in system design or performance, furnish scientific or technological information relating to a solution or approach to a problem, seek related information from the Government; advise and supervise others who are involved as to such matters; and meet with Government technical experts for such purpose; provided in each case that there is compliance with such agency regulations as have been issued.

(b) Necessary information. Scientific and technological information includes feasibility, risk, cost, and speed of implementation, when necessary to appreciate fairly the practical significance of the information. The Government may and should be fully informed of the significance of scientific and technological alternatives.

(c) Intent to influence. The furnishing of meritorious or convincing scientific or technological proposals does not constitute an intent to influence. (See Sec. 737.5(b)(7) above.)

(d) Expert testimony. This exemption does not include testimony as an "expert" in adversary proceedings in a matter in which the United States is involved or has an interest. Such testimony is governed by regulations set forth in Sec. 737.19. As to assistance as an expert or consultant, see Sec. 737.9(g), Example 7.

(e) Agency responsibility for procedures. The primary responsibility for developing procedures to guide activity under this exemption lies with each agency, so that such procedures comport with the particular characteristics of agency programs and needs. Such procedures will be reviewed periodically by the Director. In promulgating procedures, an agency may take into consideration: limiting communications to certain formats which are least conducive to the use of personal influence; segregating, to the extent possible, meetings and presentations involving matters of technical substance from those involving other aspects of the relationship; requiring that the designated agency ethics official be informed of instances where the exemption is used; or employing more restrictive practices in circumstances involving either immediate competition for contracts or applications for grants than in those involving an ongoing project.

Sec. 737.17 Exemption for persons with special qualification in a technical discipline.

(a) Applicability. A former Government employee may be exempted from the restrictions on post employment practices if the head of the agency concerned with the particular matter, in consultation with the Director, executes a certification published in the Federal Register that such former Government employee has outstanding qualifications in a scientific, technological, or other technical discipline; is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by such former Government employee's participation.

(b) When appropriate. This exemption should generally be utilized only where the former Government employee's involvement is needed on so continuous and comprehensive a basis that compliance with the procedures adopted for the communication of technical information (See Sec. 737.15), or other actions to isolate the former Government employee from other aspects of the matter, would be burdensome and impractical.

(c) Certification authority. Certification should take place at no lower level than the head of the agency, the deputy thereof, or in the absence of both, the acting agency head. Consultation with the Director shall precede any certification. The exemption takes place upon the execution of the certification, provided that it is transmitted to the Federal Register for publication.

(d) Agency registry. An agency may establish a registry for current employees, wherein the nature of their qualifications in one or more technical fields is certified after review by a supervisor, as a basis for establishing such qualifications in connection with, and to expedite, a later request for certification, should be necessity for such request arise.

Sec. 737.19 Testimony and statements under oath or subject to penalty of perjury.

(a) Statutory basis. Section 207(h) provides:

"Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury."

(b) Applicability. A former Government employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Government employee. This provision does not, however, allow a former Government employee, otherwise barred under 18 U.S.C. 207(a), (b), or (c) to testify on behalf of another as an expert witness except: (1) to the extent that the former employee may testify from personal knowledge as to occurrences which are relevant to the issues in the proceeding, including those in which the former Government employee participated, utilizing his or her expertise, or (2) in any proceeding where it is determined that another expert in the field cannot practically be obtained; that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Government employee's testimony is required in the interest of justice.

(c) Statements under penalty of perjury. A former Government employee may make any statement required to be made under penalty of perjury, such as those required in registration statements for securities, tax returns, or security clearances. The exception does not, however, permit a former employee to submit pleading, applications, or other documents in a representational capacity on behalf of another merely because the attorney or other representative must sign the documents under oath or penalty of perjury.

Sec. 737.21 Partners of present or former government employees.

(a) Scope. Section 207(g) of 18 U.S.C. prohibits a partner of a current Government employee from acting as agent or attorney before the United States in a particular Government matter in which such Government employee participates, or did participate, personally and substantially. To the extent such section involves the activities of current Government employees and their partners, it is beyond the scope of these regulations.

(b) Imputation. Neither the Act nor these regulations impute the restrictions on former employees to partners or associates of such employees. Imputation of the restrictions of sections 207(b)(ii) and (c) to partners of former employees would be inappropriate for the additional reason that section 207(b)(ii) itself restricts secondary-level activity, and section 207(c) is directed at the exercise of influence personal to the former Senior Employee.

Sec. 737.23 Officials of a state; officials of corporations created by an Act of Congress and public international organizations.

For purposes of sections 207(a), (b) and (c) of title 18 U.S.C.;

(a) An official whose powers are established by the constitution of any State of the United States does not act on behalf of "any other person" or "anyone" when acting in his or her official capacity, but rather constitutes the official authority of the State; and

(b) A former employee does not engage in unlawful activity when he or she acts on behalf of (1) a corporation specifically created by an Act of Congress if any of its directors is currently appointed by the United States; or (2) any public international organization if he or she serves by nomination or request of the United States or on temporary assignment from any agency. Sec. 737.25 Standards and procedures for designating senior employee positions pursuant to 18 U.S.C. Sec. 207(d).

(a) Definitions. As used in these regulations, "Senior Employee" refers to any person specified in or designated pursuant to 18 U.S.C. 207(d)(1); that is, employed by the United States:

(1) At a rate of pay specified or fixed according to subchapter II of Chapter 53 of title 5, U.S.C., generally known as "Executive Level;" or

(2) On active duty as a commissioned officer of a uniformed service in a pay grade of 0-9 or above as described in 37 U.S.C. 201; or

(3) In a position in any pay system for which the basic rate of pay is equal to or greater than that for GS-17 as prescribed by 5 U.S.C. 5332 or positions which are established within the Senior Executive Service (SES) pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay grade 0-7 and 0-8, as described in 37 U.S.C. 201, and who has significant decision-making or supervisory responsibilities, as designated by the Director, pursuant to paragraph (b) of this section.

(b) Designation procedures. The following procedures will be followed in designation of Senior Employee positions pursuant to 18 U.S.C. 207(d)(1)(C):

(1) Positions at GS-17 and 18 level, Senior Executive Service, and pay grades 0-7 and 0-8 of the uniformed services. The following are designated effective February 28, 1980, unless exempted as provided in paragraph (b)(2) of this section: all positions classified at GS-17 or above in the General Schedule; those in any other pay system, the rate of pay for which is at least that of grade GS-17; those active duty uniformed service officers serving in pay grades 0-7 and 0-8. Each agency head shall submit to the Director, by May 15, 1979 and on every May 15 thereafter, a report consisting of: (i) a description of all positions as set forth in this paragraph; (ii) the agency's recommendation as to those positions that should not be designated, based on standards established in these regulations or any other reason; and (iii) the basis and reasons for each such recommendation. After making such additional inquiries as appear desirable, the Director will determine which positions should be exempt. Notwithstanding the foregoing, the effective date for Executive Level positions, whether or not included in the Senior Executive Service, is July 1, 1979.

(2) Standards for designation and exemption. Positions, or classes of positions, which do not have significant decision-making or supervisory responsibility will be exempted from designation. Initial exemptions will be retroactive. Classes of positions which may be considered for exemption are those in which decision-making responsibility does not regularly extend to major policy issues within the agency or in which supervisory responsibility extends to less than all of a directorate, bureau or department which has major policy or operational responsibility. The foregoing may include, without limitation, special assistants, technical and professional advisors to persons who make policy decisions, those involved primarily in research and technical work, and administrative law judges.

(3) Senior Executive Service. The establishment of positions within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978 is the responsibility of the Office of Personnel Management. The choice of an individual to enter or not to enter the Senior Executive Service is not a relevant factor in the designation under these regulations of a position held by such person.

(4) "Rate of pay." As used in the definition of Senior Employee, the "rate of pay" is that specified by or pursuant to law without regard to the ceiling limitations of section 5308 or section 5373 of title 5 U.S.C.; except that an individual in an executive level or GS-17 or 18 position is deemed to be employed at the rate of pay specified for that position. Increases in pay due to "steps" are not considered in determining pay grade or level.

(c) Differential designation. Where appropriate, the Director may designate positions for purposes of 18 U.S.C. 207(c) without designating the positions for purposes of 18 U.S.C. 207(b)(ii).

Example 1: It may be determined that a given position or class of positions will be restricted as to contact in the first post employment year, but not as to assisting in representation.

(d) Fair notice of designation. No Senior Employee designation made pursuant to 18 U.S.C. 207(d)(1)(C) will be effective until the last day of the fifth full calendar month after the first publication of a notice by the Director of intention to designate; except as indicated in paragraph (i) of this section, and as to a person first occupying the position after such notice is published. The designation in paragraph (b)(1) of this section and the comparable designation in the interim regulations of April 3, 1979 (44 FR 19974) constitutes notice.

(e) "Acting" or temporary positions. An individual may serve in a position designated pursuant to 18 U.S.C. 207(d) for up to 60 days in an "acting" or temporary capacity without being subject to those restrictions which specially apply to such positions, unless such individual (1) was transferred or detailed from another designated position, or (2) without a significant break in continuity, is named permanently to such position.

(f) Special Government Employee. A Special Government Employee who serves on 60 days or less in a given calendar year may serve in a designated position without being subject to the restrictions which specially apply to such position. A Special Government Employee is deemed to serve only on those days actually engaged in work for the Government under his or her Special Government Employee arrangement.

(g) Publication. Positions designated by the Director pursuant to 18 U.S.C. 207(d)(1)(C) and not exempted will be published in the Federal Register.

(h) Computation of time. An individual who transfers from a designated position to one that is not designated shall compute the commencement of the time periods contained in 18 U.S.C. 207(b)(ii) and (c) from the time of such transfer, except as indicated in paragraph (i) below. (See Sec. 737.7(e).)

(i) Position shifting. In any case where a person transfers from a designated position to one that is not, the agency head shall within one month transmit to the Director a report reciting the functions of each position, the reason for the transfer, and the identities of the prior holder of the position assumed and the successor, if any, to the position departed. If the Director designates the newly assumed position pursuant to section 207(d)(1)(C) of title 18 U.S.C., such designation shall be effective retroactively to the date of transfer notwithstanding paragraph (d) of this section.

(j) Revocation of Designations. In the event the Director determines that a position previously designated should not have been, the designation will be revoked. Except for designations made under paragraph (i) of this section, the revocation may be made retroactive if the initial designation is determined to have been erroneous or if there is a change in standards for designation applicable to the position. Retroactive effect will not be given where the basis for revocation is a change in the functions or importance of a position.

Sec. 737.27 Administrative enforcement proceedings.

(a) Basic procedures. The following basic guidelines for administrative enforcement of restrictions on post employment activities are designed to expedite consultation with the Director as required pursuant to section 207(j) of title 18 U.S.C.

(1) Delegation. The head of an agency may delegate his or her authority under this subpart.

(2) Initiation of administrative disciplinary hearing. (i) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears substantiated, the agency head shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. The agency should coordinate any investigation on administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Agency that it does not intend to initiate criminal prosecution. (ii) Whenever an agency has determined after appropriate review that there is reasonable cause to believe that a former Government employee has violated any of these regulations or 18 U.S.C. 207(a), (b), or (c), it may initiate an administrative disciplinary proceeding by providing the former Government employee with notice as defined in paragraph (a)(3) of this section. Agencies may established procedures to protect the privacy of former employees as to allegations made prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

(3) Adequate notice. (i) an agency must provide a former Government employee with adequate notice of an intention to institute a proceeding and an opportunity for a hearing. (ii) notice to the former Government employee must include:

(A). A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Government employee to prepare an adequate defense;

(B). Notification of the right to a hearing; and

(C). An explanation of the method by which a hearing may be requested.

(4) Presiding official. (i) The presiding official at proceedings under this subpart shall be the agency head or an individual to whom the agency head has delegated authority to make an initial decision (hereinafter referred to as "examiner"). (ii) Appropriate qualifications shall be established for examiners. (iii) An examiner shall be impartial. No individual who has participated in any

manner in the decision to initiate the proceedings may serve as an examiner in those proceedings.

(5) Time, date and place. (i) The hearing shall be conducted at a reasonable time, date, and place. (ii) In setting a hearing date, the presiding official shall give due regard to the former Government employee's need for:

(A) Adequate time to prepare a defense properly, and

(B) An expeditious resolution of allegations that may be damaging to his or her reputation.

(6) Hearing rights. A hearing shall include, at a minimum, the following rights:

(i) To represent oneself or to be represented by counsel,

(ii) To introduce and examine witnesses and to submit physical evidence,

(iii) To confront and cross-examine adverse witnesses,

(iv) To present oral argument, and

(v) To receive a transcript or recording of the proceedings, on request.

(7) Burden of proof. In any hearing under this subpart, the agency has the burden of proof and must establish substantial evidence of a violation.

(8) Hearing decision. (i) The presiding official shall make a determination exclusively on matters of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue. (ii) Within a reasonable period of the date of an initial decision, as set by the agency, either party may appeal the decision on such appeal solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues. (iii) If the agency head modifies or reverses the initial decision, he or she shall specify such findings of fact and conclusions of law as are different from those of the hearing examiner.

(9) Administrative sanctions. The agency head may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a), (b), or (c) of these regulations after a final administrative decision or who failed to request a hearing after receiving adequate notice, by:

(i) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on any matter of business for a period not to exceed five years, which may be accomplished by directing agency employees to refuse to participate in any such communication; or

(ii) Taking other appropriate disciplinary action.

(10) Judicial review. Any person found to have participated in a violation of 18 U.S.C. 207(a), (b), or (c) of these regulations may seek judicial review of the administrative determination.

(11) Consultation and review. Each agency shall submit a copy of its procedures for administrative enforcement to the Director.

Sec. 737.29 Effective date of restrictions.

(a) Persons affected. Any person who holds a Government position after June 30, 1979, becomes subject to any additional restrictions relating to the holder of that position contained in the amendments to 18 U.S.C. 207 as set forth in these regulations. Restrictions which depend on the designation of a position by the Director shall become applicable on the date such designation becomes effective.

(b) Fair notice of substantive changes. No change in the substance of these regulations shall become effective with respect to a Government employee who is adversely affected by such change until and unless such employee remains in a position to which such change is applicable for a period of five months following the first publication of a regulation in final form, reflecting or prescribing such change, or unless such employee accepts such a position after the publication.

****END OF SECTION****

Attachment 2M

Summary of the Post-Employment Restrictions of the Ethics in Government Act of 1978 and Important Interpretation

in the Regulations -Contains June 1979
Amendments-

Introduction

See also, Interim Update Dataset: Major Functional Series 400, Interim Update #12, Ethics Rules on Seeking Employment and Post-Employment Restrictions.

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 Employee").

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:

****END OF SECTION****

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.

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.

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.

Second, this bar requires that the employee have been personally involved in the matter in a substantial way.

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 employees "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.

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.

****END OF SECTION****

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.

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 and 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 negotiating 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.

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 non-profit hospital or medical research institution by an elected official of such a government, or a person principally employed by such government, institute or medical organization.

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 information. 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.

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.

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 0-9 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 0-7 or 0-8.

Other Important Features

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.

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 futures 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 role is published in final form.

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 0-9 and above on July 1, 1979. Those positions at GS-17 or above or in the Senior Executive Service, or held by 0-7 and 0-8 uniformed service officers and which are designated by the Director will be subject to the Senior Employee restrictions as of October 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Office of Government Ethics Room 5315 1900 "E" Street, N.W. Washington, D.C. 20415 (202)632-7642

****END OF SECTION****

Administrative Enforcement Procedures of Post-Employment Restrictions

See also, Interim Update Dataset: Major Functional Series 400, Interim Update #12, Ethics Rules on Seeking Employment and Post-Employment Restrictions.

Part 223 (10/83)