

Office of Government Ethics

96 x 16--08/21/96

**Memorandum dated August 21, 1996,
from Stephen D. Potts, Director,
to Designated Agency Ethics Officials,
General Counsels, and Inspectors General
Regarding Amendments to 18 U.S.C. § 205 and
18 U.S.C. § 207**

On August 6, 1996, the President signed the Federal Employee Representation Improvement Act of 1996, Pub. L. No. 104-177, which amended 18 U.S.C. § 205. As a result of this amendment, executive branch employees may now represent certain nonprofit organizations before the Government except in connection with specified matters. Also on August 6, the President signed the Office of Government Ethics Authorization Act of 1996, Pub. L. No. 104-179. In addition to reauthorizing the Office of Government Ethics (OGE) through fiscal year 1999, it amended 18 U.S.C. § 207 to change the rate of basic pay triggering "senior employee" status and to add a new exception permitting former high-level officials to represent certain candidates and political organizations notwithstanding 18 U.S.C. § 207 or (d). All amendments were effective on August 6.

Amendment of 18 U.S.C. 205

Section 205 of title 18, United States Code, prohibits an executive branch employee from acting as agent or attorney for anyone in any claim against the United States or from acting as agent or attorney for anyone before any Federal department, agency, or court in connection with a particular matter in which the United States is a party or has a direct and substantial interest. These restrictions apply regardless of whether the employee receives compensation for his assistance. The statute contains standards for special Government employees that limit the scope of the restrictions. It also contains several exceptions. For example, provided the necessary agency approval is received, section 205(e) has long permitted an employee to represent his parents, spouse, or child before the Government in connection with most matters. And, section 205(d) has authorized an employee to represent a person in connection with certain personnel administration proceedings.

The Federal Employee Representation Improvement Act of 1996 amended section 205(d) to add an additional exception. New section 205(d)(1)(B)

provides that, with some limitations, section 205 does not prohibit an employee from representing before the Government "any cooperative, voluntary, professional, recreational, or similar organization or group not established or operated for profit, if a majority of the organization's or group's members are current officers or employees . . . or their spouses or dependent children." New section 205(d)(2) provides, however, that the exception described in section 205(d)(1)(B) cannot be used in certain circumstances, such as when the subject of the representation is a claim against the United States. New section 205(I) confirms that nothing in section 205 prevents an employee from acting pursuant to a Federal law "that authorizes labor-management relations between an agency or instrumentality of the United States . . . and any labor organization that represents its employees."

Amendment of 18 U.S.C. § 207

Section 207 of title 18, United States Code, prohibits a former "senior" employee from representing anyone before any department or agency in which he served during the one-year period before he terminated senior service. A similar restriction applies to individuals covered by section 207(d), but a former "very senior" employee is also barred from representing another by communicating to or appearing before any individual currently appointed to an Executive Schedule position listed in 5 U.S.C. §§ 5312-5316. The statute provides for certain exceptions to or exemptions from these restrictions.

Prior to the amendment of section 207(c)(2)(A)(ii) by the Office of Government Ethics Authorization Act of 1996, section 207 applied, inter alia, to employees occupying positions for which the rate of basic pay was equal to or greater than the rate of basic pay for level 5 of the Executive Schedule (EL-V), currently \$108,200. The amendment replaced the EL-V threshold with the rate of basic pay payable for level 5 of the Senior Executive Service (ES-5), currently \$114,000. Significantly, as a result of the amendment, a member of the Senior Executive Service will not become subject to section 207 upon terminating a position for which he was paid at level ES-4. As specified in section 207(c)(2)(A)(I), however, the one-year bar will continue to apply to an employee who leaves an Executive Schedule position regardless of whether the rate of basic pay for the position is less than that payable for ES-5.

The amendment of section 207(c)(2)(A)(ii) supersedes the temporary waiver of sections 207 and (f) originally granted by OGE in January and extended in June "through October 31, 1996, or until the effective date of any remedial legislation, whichever occurs earlier." See OGE Memoranda to

Heads of Agencies, Designated Agency Ethics Officials and Inspectors General dated January 4, 1996 (DO-96-001) and June 6, 1996 (DO-96-030). See also, 61 Fed. Reg. 28908-28910 (June 6, 1996). The waiver had applied to individuals holding positions for which the rate of basic pay on December 28, 1995, was less than that payable for EL-V but whose rate of basic pay was caused to equal or exceed that threshold as a result of the pay raise effected by Executive Order 12984.

The Office of Government Ethics Authorization Act of 1996 also amended section 207 to add a new exception to section 207 and (d). Under new section 207(j)(7), a former senior or very senior employee may represent a "candidate" for Federal or State office or "an authorized committee, a national committee, a national Federal campaign committee, a State committee, or a political party." For the exception to apply, the former employee may not be employed by anyone other than a candidate, one of the specified political organizations, or a person or entity who represents or advises only such candidates or political organizations. Already effective, this amendment is expected to facilitate the involvement of former high-level Government officials in political campaigns.