

## **Office of Government Ethics**

**93 x 13 -- 06/10/93**

### **Letter to a Former Employee dated June 10, 1993**

This is in reply to your letter of May 26, 1993, in which you asked about the possibility of being granted an exemption from a provision restricting your post-employment activities. You served in an ES-5 position for a short period prior to terminating Government service. You were advised by an ethics official [of your former] Department that your service in that position triggered application of 18 U.S.C. § 207(c), a one-year post-employment restriction applicable to former "Senior" Employees.

Section 207(c) of title 18, United States Code, applies to any person who was employed in a position "for which the basic rate of pay . . . is equal to or greater than the rate of basic pay payable for level V of the Executive Schedule." Since the rate of basic pay payable for an ES-5 position is greater than that payable for level V of the Executive Schedule, we agree that you became subject to section 207(c) when you terminated the Senior Executive Service position, notwithstanding the fact that you only received the pay for that position for a short time. While the statutory provision is not triggered merely because an individual "acts" in a position, it was triggered in your case since you actually received ES-5 pay.

Section 207(c)(2)(C) authorizes the Director of the Office of Government Ethics, at the request of a department or agency, to waive the restrictions of section 207(c) with respect to certain positions or categories of positions. Before exempting a position or positions, we must determine that two criteria are satisfied. First, we must find that "the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions." Second, we must find that "granting the waiver would not create the potential for use of undue influence or unfair advantage." Significantly, according to implementing regulations published at 5 C.F.R. § 2641.201(d)(4), an exemption does not benefit an individual who terminated senior service prior to the effective date of the exemption.

[Your former] Department has [n]ever submitted a request that any position be exempted from the application of 18 U.S.C.

§ 207(c). Accordingly, I must confirm that you will be subject to section 207(c) for one year dating from the termination of your service in the ES-5 position.

Sincerely,

Stephen D. Potts  
Director