

Office of Government Ethics

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Letter to an Agency Ethics Official dated May 1, 1989

This letter responds to your letter of April 12, 1989, seeking our opinion on the proposal of the [agency] to waive, pursuant to 18 U.S.C. § 207(f) and 5 C.F.R. § 737.17, the post-employment prohibitions of 18 U.S.C. §§ 207(a) and (b)(i) with respect to [an agency employee].¹ The waiver is requested so that [the employee] may continue to collaborate with his scientific colleagues at [the agency] after he accepts employment [in a scientific position in the private sector]. Based on the information you submitted concerning [the employee's] background, the duties he has performed at [the agency], the duties he anticipates performing [in his new position] and the cooperative research and development agreements ("CRDA") between [the agency] and [the prospective employer], we have determined that a waiver should be granted in this exceptional case.

[The employee] presently serves as [chief of a scientific branch]. In that capacity, he was personally and substantially involved in setting up the CRDA with [his prospective employer].² [The employee] intends to leave Government service in the near future to accept a position [with this] Washington-based company. Because of [the employee's agency] activities, he would be restricted in his [activities for the new employer] by the provisions of 18 U.S.C. §§ 207(a) and (b)(i), absent a waiver.³ Were the waiver to be granted, [the employee] would be involved with scientific collaboration with his former colleagues conducted pursuant to the CRDA. As an employee of [the prospective employer], [the employee] would not have direct duties in representing [the prospective employer] to [the agency] or in implementing or modifying the CRDA.

The documents you submitted in connection with the request for a waiver support your characterization of [the employee] as a world renowned scientist whose advice and opinions are regularly sought in the area of [his field of science] by dozens of organizations and scientific publications. [The employee] holds a Ph.D. from the University of California, San Francisco, and has served [the agency] for the past twenty years. In September 1981, he organized [a] Branch [dealing in the science arena that is his expertise] within the [agency] and has acted as Chief of

that Branch since that time. He has performed [a type of] research that has defined fundamental [types of] mechanisms and identified new [types of] strategies for [achieving a scientific goal.] His honors include receiving [two agency awards for outstanding scientific achievement] and being a member of the [advisory board to a scientific foundation.]

From the materials submitted, it appears that [the employee's] continued collaboration with his scientific colleagues at [the agency] would be extremely valuable to [the agency]. Since it seems that [the employee] is qualified to make a significant contribution to [the agency's] continued research being conducted pursuant to the CRDA, it appears that his continued collaboration will serve the national interest. See 5 C.F.R. § 737.17(a). **4**

Because [the employee's] position at [the prospective employer] will entail frequent scientific collaboration with [the agency] under the CRDA, pursuant to 5 C.F.R. § 737.17 (b), "his involvement is needed on so continuous and comprehensive a basis" that other potential remedial procedures "would be burdensome and impractical."

Based on the information you provided and for the reasons discussed above, we have concluded that in the exceptional circumstances of [the employee's] case a waiver should be granted. After you have drafted the language of your proposed Federal Register notice, please submit it to this office for our approval.

Sincerely,

Frank Q. Nebeker
Director

1 Yours letter of April 12, 1989, is supplemented by your letter dated April 25, 1989, with enclosures in response to our request for additional information.

2 We understand from your correspondence that [the employee] promptly disqualified himself from any further involvement with the CRDA after [the prospective employer] extended its offer of employment.

3 Because [the employee] is not a senior employee, he is not subject

to the additional post-employment restrictions of 18 U.S.C. §§ 207(b)(ii) and (c).

4 We note that, in your estimation, [the employee's] continued collaboration "is clearly in the best interests of [the agency] and the United States."