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Post Employment, "Revolving Door," Restrictions for Legislative Branch Members and Employees

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Summary

This report provides a brief discussion of the post-employment restrictions, often called "revolving door" laws, that are applicable to Members, officers and employees of Congress after they leave congressional service or employment.

Background

The restrictions on certain private employment activities after the termination of one's employment with or service in Congress derive substantially from amendments to the federal criminal code, at 18 U.S.C. § 207, in the Ethics Reform Act of 1989, effective January 1, 1991.[1] These provisions included the legislative branch for the first time in restrictions that before had applied only to certain high level executive branch officials. The relevant provisions, in addition to prohibiting Members of Congress from lobbying or advocating for private parties before the entire Congress and legislative branch for one year after leaving office, bar certain congressional staff (depending on their compensation level), for one year after leaving their congressional employment, from undertaking certain representational or advocacy activities on behalf of private interests before that Member, or before that committee or legislative office, which had employed the individual. 18 U.S.C. § 207(e).

The restrictions within the post employment provisions are based on broad "conflict of interest" principles, and seek to limit possible attempts to exert undue or improper influence on the government on behalf of private parties by former government officials now in the private sector who may be seen to have left their government post to "cash in" on their "inside" knowledge and personal influence with those persons remaining in the

[1] P.L. 101-194, Title I, § 101(a), 103 Stat. 1716, November 30, 1989, as amended by P.L. 101-280.

government.[2] Another interest of the government is to protect itself from the influence and allure that a lucrative private arrangement, or the prospect of such an arrangement, may have on a current federal official when dealing with prospective private clients or employers while still with the government, that is, "that the government employee not be influenced in the performance of public duties by the thought of later reaping a benefit from a private individual."[3]

The relevant restrictions may be summarized briefly as follows:

1. One-year "Cooling Off" Period

Senators, Representatives, elected officers of Congress, and *covered* employees of the legislative branch are now subject to a so-called "cooling off" or "no contact" period for one year after they leave congressional office or employment. Employees of the legislative branch are covered, generally, if they are compensated at a rate equal to or above 75 percent of the rate of pay of a Member of the House or Senate.[4]

Contacts within restriction - The restrictions are focused on advocacy communications, such as lobbying or other representational activities before Congress. The statute does not apply merely to *any* "contact" that a former Member or employee may have with Congress, a former employing Member, committee or legislative office. Rather, the law applies more narrowly to one who knowingly makes, "with the intent to influence, any communication to or appearance before" the Member, office or committee "on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee ... in his or her official capacity."[5] The restriction is thus not merely on "contacts" or "communications" *per se*, but on communications which attempt to influence a Member or staff to act in an "official capacity" on a certain matter, such as, for example, on legislation, appropriations, or to intervene with an administrative agency on a matter.

Members and elected officers - Members of the Senate and the House of Representatives, and elected officers of Congress, are prohibited for a year after leaving Congress from lobbying or making other advocacy contacts with any Member, officer or employee of either House of Congress, or to any employee of a legislative office. 18 U.S.C. §207(e)(1).

Personal staff of Members - Employees on the personal staff of a Member of the House or Senate, if such employees meet the salary threshold, may not make advocacy

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[2] See S.Rpt. No. 99-396, 99th Congress, 2d Session (1986), and S.Rpt. No. 100-101, 100th Congress, 1st Session (1987).

[3] Brown v. District of Columbia Board of Zoning, 423 A.2d 1276, 1282 (D.C. App. 1980); note General Motors Corporation v. City of New York, 501 F.2d 639, 648-652 (2d Cir. 1974), as to appearances of improprieties in such situations.

[4] 18 U.S.C. § 207(e)(6)(A). At current congressional salaries, as of this writing in 1994, a House or Senate employee would be covered if that person is compensated at an annual rate equal to or in excess of $100,200 (75% of $133,600).

[5] 18 U.S.C. § 207(e)(2) - (5).

or representational contacts covered by these provisions to that Member of Congress, or to any of the Member's employees, for one year after they leave office. 18 U.S.C. §207(e)(2).

Committee staff - Committee staffers covered by these provisions will be barred from making such advocacy contacts and representations for a year after leaving office to any Member or employee of their former committee, or to any Member who was on the committee during the last year of the staffer's employment. 18 U.S.C. §207(e)(3).

Leadership staff - Covered employees of a leadership office of the House or Senate will be barred from making such advocacy contacts and representational communications with intent to influence for a year after leaving office to any Member or employee of the leadership office of the House or Senate, respectively. 18 U.S.C. § 207(e)(4). The leadership members and staff include the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman and secretary of the Republican Conference, chairman of the Republican Research Committee, and Chairman of the Republican Policy Committee, of the House of Representatives. 18 U.S.C. § 207(e)(7)(L).

2. Exceptions to "Cooling Off" Period

Since the post-employment restrictions of 18 U.S.C. § 207 are for the protection of the United States Government, the advocacy limitations do not generally concern one's activities performed in the course of *official* duties on behalf of the United States, or as an elected official of any State or local government, after leaving the federal government. 18 U.S.C. § 207(j)(1). Similarly, communications as an employee of a State or local government on behalf of such governmental entity, or on behalf of an institution of higher education or a non-profit hospital, are permitted. 18 U.S.C. § 207(j)(2). There are limited exemptions for appearances and communications on behalf of international organizations in which the United States is a member when approved by the Secretary of State (18 U.S.C. § 207(j)(3)), communications based on one's personal knowledge of a matter (where no compensation is received) (18 U.S.C. § 207(j)(4)), and an exception for the furnishing of scientific and technical information (18 U.S.C. § 207(j)(5)). Finally, there is a specific exception for the providing of testimony that is under oath, or making statements that are required to be made under penalty of perjury. 18 U.S.C. § 207(j)(6).

3. REPRESENTING FOREIGN GOVERNMENTS

Members and "senior" legislative branch employees covered by the one-year "cooling off" period are also prohibited for a year after leaving office from representing an official foreign entity before the United States, or aiding or advising such entity with intent to influence any decision of an agency or employee of the United States Government. 18 U.S.C. §207(f).

4. Trade or Treaty Negotiations

There is a further restriction on *all* officers and employees of the government, including Members of Congress and all congressional staff, who worked personally and substantially on a treaty or trade negotiation and who had access to information which is

not subject to disclosure under the Freedom of Information Act, from using such information for one year after leaving the government for the purpose of aiding, assisting, advising, or representing anyone other than the United States regarding such treaty or trade negotiation. 18 U.S.C. §207(b)(1).

5. Lobbying Restrictions on All Senate Staff

All employees of the Senate remain subject to the Senate Rule governing lobbying after they leave Senate employment. Senate Rule XXXVII, clause 9, applies to all former staffers who have become registered lobbyists, or are employed by a registered lobbyist to influence legislation. Such former staffers are prohibited for one year after leaving the Senate from lobbying the Senator for whom they used to work or the Senator's staff; or if they were committee staff, may not lobbying the Members or the staff of that committee for one year.

6. Acceptance of Civil Office by Retiring Member

A Member of Congress may not, before the expiration of his or her term, accept a civil office in the United States Government if that office was created, or the salary for the office had been increased during the Member's current term. United States Constitution, Article I, Section 6, clause 2. This constitutional provision would by its terms prevent a Member of Congress from retiring from Congress before his or her current term has expired, and accepting such a civil position with the government.