

SOCO ADVISORY

Department of Defense
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Standards of Conduct Office
OSD.SOCO@MAIL.MIL

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Determining Whether an Employee is “Very Senior” for Purposes of 18 U.S.C. §207(d)(1)(B)

The post-Government employment conflict of interest statute at 18 U.S.C. § 207 creates “cooling off” periods for former senior and “very senior” employees that prevent them from knowingly making, with the intent to influence, any communication or appearance before their former agency (and, for very senior employees, certain other Federal officials) on behalf of another person in connection with an official action. Former “senior” employees are subject to 18 U.S.C. § 207(c), while 18 U.S.C. § 207(d) applies to former “very senior” employees. This SOCO Advisory guides DoD ethics officials in determining whether a former employee is “very senior” for the purposes of 18 U.S.C. § 207(d)(1)(B).

Section 207(d) of title 18 designates certain employees as “very senior.” Among these are “any person who . . . is employed in a position in the executive branch of the United States (including any independent agency) at a rate of pay payable for level 1 of the Executive Schedule.” 18 U.S.C. § 207(d)(1)(B) in the Department of Defense, 18 U.S.C. § 207(d) includes the Secretary of Defense, but not the Secretaries of the Military Departments or others. However, DoD ethics officials have asked whether 18 U.S.C. § 207(d) would also apply to employees appointed under the Intergovernmental Personnel Act (IPAs) or as Highly Qualified Experts (HQEs) who are employed *at or above* a rate of pay for level 1 of the Executive Schedule.”

The Department of Justice (DoJ) addressed this question in 2017. (*See* Opinions of the Office of Legal Counsel, Vol. 41, January 19, 2017, pp 1-25.) DoJ determined that 18 U.S.C. § 207(d) would apply to an employee who received a rate of basic pay of exactly the amount of level 1 of the Executive Schedule. The two-year cooling off period in 18 U.S.C. § 207(d) would not apply to former IPAs, HQEs or other employees who were compensated below or above this amount. DoJ’s opinion more fully describes the application of 18 U.S.C. § 207(d) to former Federal employees and is available at 2017-01-19-very-sr-emples.

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