



THE DEPUTY SECRETARY OF THE TREASURY
WASHINGTON

JUN 21 2013

The Honorable Carolyn N. Lerner
Special Counsel
U. S. Office of Special Counsel
1730 M Street, N.W. Suite 300
Washington, D.C. 20036-4505

Dear Ms. Lerner:

I am responding to your April 18, 2013 letter to Secretary Lew in which you referred, pursuant to 5 U.S.C. Section 1213, an allegation that the Office of the Comptroller of the Currency (OCC) had failed to comply with a statutory and regulatory requirement to timely advise certain senior employees of their amenability to 18 U.S.C. Section 207(c)'s restrictions on their post-employment activity.

Consistent with statute and Treasury policy, the Department asked its Office of Inspector General (OIG) to conduct the required inquiry and produce the report and response required by Section 1213(d). That has been done; the report memorandum with its attachments is enclosed as the formal response of the Department of the Treasury to this referral.

In brief, the OIG found that OCC had failed to timely provide the required advice, and that it now has a process in place to remedy that deficiency. The OIG will monitor the implementation of that process. The OIG report discusses reasons given for the failure. The report is being provided to management officials at OCC and in the Treasury Departmental Offices.

I believe that the OIG's report well and sufficiently addresses the problem referred to the Department, and that thereby the Department's responsibility has been carried out. Please call me on (202) 622-1080 if you would like to discuss this matter, or your staff can contact Counsel to the Inspector General Rich Delmar on (202) 927-3973.

Sincerely,

Neal S. Wolin

Enclosure



DEPARTMENT OF THE TREASURY
WASHINGTON

June 17, 2013

INSPECTOR GENERAL

MEMORANDUM FOR DEPUTY SECRETARY WOLIN

FROM:

Eric M. Thorson
Inspector General

SUBJECT:

Referral from the Office of Special Counsel Regarding
Office of the Comptroller of the Currency

In accordance with the Whistleblower Protection Act, the Office of Special Counsel (OSC) wrote to the Secretary on April 18 [Attachment 1] regarding a whistleblower complaint concerning deficiencies in the ethics/standards of conduct advice program conducted by the Office of the Comptroller of the Currency (OCC). Through the Office of General Counsel (OGC), my office was requested to investigate this matter and provide you with a report for your submission back to OSC, consistent with Section 4.b.15 of Treasury Directive 40-01¹.

In accordance with 5 U.S.C. Section 1213(c) and (d), we submit this report to address the issues referred to the Secretary by OSC.

Summary of information with respect to which investigation was initiated

The Special Counsel's April 18 letter stated that an unidentified complainant alleged that since 2009, OCC's Law Department has failed to comply with the statutory and regulatory requirement that certain senior employees be notified of post-employment restrictions imposed by 18 U.S.C. section 207(c).

The allegation stated that in 2009, employees paid more than \$153,105 per year were subject to a one-year post-employment "cooling off" period, during which time their ability to conduct business with their former employer is restricted. The pay threshold later was raised to \$155,440. The notice must be given at the time the employee meets or exceeds the pay threshold, and again when the employee leaves. A copy of each such notice must be provided to the office's Designated Agency Ethics Official (DAEO) or delegate.

Due in part to its being on a unique pay scale, OCC has a large number of employees who are paid above the threshold. The allegation estimated the number as 100, although it could be "several times" that amount². The allegation stated that before 2009, the responsible OCC office

¹ The IG may investigate any request received from the OSC that the Secretary refers to the IG.

a) The IG shall prepare for the review and signature of the Deputy Secretary all final Reports of Investigation requested by the OSC. The reports shall be submitted by the IG through the Deputy Secretary to the OSC, and shall conform to the requirements set forth in 5 U.S.C. 1213(d).

² As noted below, the OCC official responsible for the notice process stated that there are approximately 400 such senior employees.

made all required notifications, but this stopped in 2009 when Jennifer Dickey became the attorney responsible for the notice process. David Kane, the Director of the Administrative and Internal Law Division of OCC's office of chief counsel, and Patricia Grady, the Assistant Director, were also identified as responsible parties. The allegation further stated that prior to 2009, the notice requirement was met by the counsel and Human Resource (HR) officials then responsible, Barry Aldemeyer and Brenda Curry; however, in 2009, the notices stopped being sent. Ms. Dickey was confronted about this in 2011 and allegedly stated that the then-pending integration of all staff and functions of the Office of Thrift Supervision into the OCC caused the cessation. Although that process was completed in mid-2011, the failure to send notices continued. Mr. Kane was similarly confronted about the failure in 2010, but nothing was done.

Description of conduct of investigation

I tasked my Office of Counsel to determine the facts and make the required report on this matter. Counsel reviewed the Special Counsel's submission, the applicable law, regulation and Treasury policy relevant to the issue, interviewed responsible officials at the OCC's legal and human resources departments and OGC's ethics officials, and obtained relevant documents.

Summary of evidence obtained from investigation

The matter at issue, timely and complete advice to senior employees about how 18 U.S.C. 207(c) governs some of their activities after Government service, is a requirement of 5 U.S.C. 7302³ and 5 C.F.R. Part 730 [Attachment 2]. The statute mandates that the regulations specifically require that notice be given before, or as part of, the action that affects the employee's coverage under 18 U.S.C. section 207(c)(1), and again when employment or service in the covered position is terminated. The regulations in fact do that: see 5 C.F.R. section 730.104. As will be discussed below, OCC, for the past several years, in fact did fail to make the notifications at the time of the predicated personnel actions, but did make them when senior employees left the OCC. OCC is fixing its process to come into full compliance with the dual notification requirement.

As an initial matter, we interviewed Treasury's DAEO, Assistant General Counsel for General Law, Ethics and Regulation (GLER) Rochelle Granat, and her Deputy for ethics and standards of conduct, Elizabeth Horton, about the Department's overall process for assuring that all bureaus and offices comply with this notice requirement. They told us that the notice requirement is

³ 5 U.S.C. § 7302 Post-employment notification

(a) Not later than the effective date of the amendments made by section 1106 of the National Defense Authorization Act for Fiscal Year 2004 or 180 days after the date of the enactment of that Act, whichever is later, the Office of Personnel Management shall, in consultation with the Attorney General and the Office of Government Ethics, promulgate regulations requiring that each Executive branch agency notify any employee of that agency who is subject to the provisions of section 207(c)(1) of title 18, as a result of the amendment to section 207(c)(2)(A)(ii) of that title by that Act.

(b) The regulations shall require that notice be given before, or as part of, the action that affects the employee's coverage under section 207(c)(1) of title 18, by virtue of the provisions of section 207(c)(2)(A)(ii) of that title, and again when employment or service in the covered position is terminated.

carried out by each Treasury office and bureau's HR and/or Counsel functions; the process is not standardized across the Department. The Department's Executive Resources office (within the office of the Deputy Assistant Secretary for Human Resources) sends out an annual reminder with template notification letters to all office and bureau HR offices. GLER reviews this reminder package before it is sent out. The package for the current year is appended as Attachment 3.

Generally, and specifically with respect to OCC's Office of Chief Counsel, GLER engages in periodic check-ins about the process, and ethics/standards of conduct training and advice, but does not routinely supervise that office. Ms. Granat stated that there is no formal "audit" of these functions.

The GLER officials stated that they interpret the regulatory requirements in 5 C.F.R. section 730.104 to apply to agency HR functions. This would appear consistent with the requirement in section 730.104(a) that copies of the written notice must be provided to the DAEO, "or his or her delegate." Ms. Granat stated that she views the bureaus' Ethics Counsels as her delegates in her role as the Treasury DAEO, although she stated that she does not ask for, and does not receive, copies of the bureau-level written notices.

The GLER officials stated that the annual training for all OGE Form 278 filers includes training on the section 207 restrictions, and that post-employment advice, including section 207 obligations, is provided specifically to all "Termination 278" filers.

Having ascertained what the Department-level policy guidance is, we next interviewed the responsible officials at OCC's Office of Chief Counsel and Human Resources office: Director, Administrative and Internal Law David Kane, Special Counsel Jennifer Dickey, Deputy Comptroller for Human Resources Patricia Pointer, and Director, Employment Policy and Services Joy Charles. Because there was no specific allegation against, or further mention of, Assistant Director Patricia Grady, we did not include her in our interview.

Ms. Dickey stated that currently (as of May 23, 2013), employees do not receive 207(c) notice upon reaching the salary threshold for its applicability, but such notice is provided to all departing employees, and always has been. Previous notices summarized the requirements, including the one-year cooling off period, but did not address the penalties for violation. The most recent notice includes the penalty information as well. She provided copies of both notices, one dated 08/09/2010, the other dated 05/21/2013 [Attachments 4 and 5].

Ms. Dickey said she was currently working with HR to ensure that notice is also provided to employees when they attain the salary threshold. Ms. Pointer and Ms. Charles agreed that a process was being put in place to ensure this occurred, and that all covered employees would receive notice in a week or so. Ms. Charles said that the current system is manual, but they were working on automating the process as well. OCC has approximately 4800 employees, and about 400 who are covered by 207(c). Ms. Charles said that reports can be run to identify covered

employees and that they would soon also indicate whether they received the required 207(c) notice.

Ms. Dickey said that responsibility for providing notice is shared jointly between counsel and HR, as HR knows who has reached the threshold, and ethics counsel knows the restrictions and requirements. Mr. Kane said that prior to 2008, ethics counsel Barry Aldemeyer ran the program, including 207(c) notice, and coordinated with HR. Upon his retirement, ethics counsel Brenda Curry assumed responsibility, but took ill and died later that year. Mr. Kane said he assumed responsibility for the program at that time, in addition to his other duties, and assumed it was at this point that the notices stopped being sent to employees when they reached the threshold⁴. He believed that after the HR point of contact retired in 2010, the notice process “fell through the cracks.” He is working to get the program back on track now.

Mr. Kane and Ms. Dickey agreed that the Department’s ethics counsel provides guidance to the OCC ethics program, and with regard to this matter, provides 207(c) information and letters for use by the bureaus, but does not conduct any follow up to ensure compliance. Ms. Dickey did not recall if 207(c) has been addressed in annual ethics training over the past few years, but will check and provide that information to OIG. She stated her belief that most of the training was oral, so there may not be a way to check⁵.

Ms. Dickey stated that she was alerted to the notice issue in 2011 by an email from a District ethics official, and told him that it was not a priority because of the more pressing matters associated with the merger with the Office of Thrift Supervision. She said she did not make any affirmative decision to cease sending notice to employees reaching the threshold, or ignore the issue, it simply was not a priority at the time.

Mr. Kane said that over the past couple of weeks, they have taken steps to correct the problem and ensure compliance. He agreed to provide a summary of the issues identified, corrective measures, and the new processes to ensure compliance going forward. Mr. Kane did in fact send follow-up information regarding the updated processes; see Attachments 6 and 7.

Listing of violation or apparent violation of any law, rule, or regulation

As discussed above, the lapses in the OCC procedure do constitute violations of 5 U.S.C. section 7302 and 5 C.F.R. section 730.104.

Description of action taken or planned as a result of investigation

5 U.S.C. section 1213(d) lists four categories of possible action:

⁴ This is consistent with the allegation that the notices stopped being given in 2009.

⁵ The follow-up memo from Ms. Dickey and Mr. Kane [Attachment 6] does state that the issue has been addressed in annual training materials since 2010.

changes in agency rules, regulations, or practices;
restoration of any aggrieved employee;
disciplinary action against any employee; and
referral to the Attorney General of any evidence of a criminal violation.

As discussed above and demonstrated in Attachments 6 and 7, OCC's practice has been changed as a result of the problem being identified and analyzed. In our view, the changes being made respond to the faults alleged, and will, if fully implemented, satisfy the requirements of the statute, regulation, and Treasury guidance. The OIG will monitor the process.

Additionally, we recommend that GLER consider standardizing the 207(c) notice requirement across the Department, and heighten its oversight and follow-up with office and bureau implementation.

There is no identified aggrieved employee to restore, and no indication that any employee has been sanctioned or otherwise treated improperly as a result of this disclosure, inquiry, and procedural change.

It is not the OIG's role to recommend that particular employees be disciplined for their actions or inactions. Rather, we find facts, and present them to managers and other concerned officials. That being said, there were obviously procedural lapses at the OCC, which are being corrected. And a unilateral decision about prioritizing which results in non-compliance with a statutory requirement is of concern, even if understandable in an environment of duties exceeding resources. My office will make these facts known to responsible officials of OCC and the Departmental Offices.

We found no lapses or other issues that rise to the level of criminal violations; accordingly we do not plan to make any referrals to the Attorney General.

The procedure established in Treasury Directive 40-01 calls for you to transmit this report to the Special Counsel. I will prepare the appropriate transmittal letter for your signature. The report is due to OSC no later than June 24, 2013. Please call me on 622-4105 if you have questions or wish to discuss this, or your staff can call my Counsel, Rich Delmar, on 927-3973.

Attachments

Attachment 1 - Letter from Special Counsel Lerner to Secretary Lew



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

April 18, 2013

The Honorable Jacob J. Lew
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Re: OSC File No. DI-13-2004

Dear Mr. Secretary:

Pursuant to my responsibilities as Special Counsel, I am referring to you a whistleblower disclosure that employees of the Department of the Treasury, Office of the Comptroller of the Currency (OCC), Law Department, Washington, D.C., engaged in conduct that may constitute a violation of law, rule, or regulation. The Office of Special Counsel received this allegation from a whistleblower who has declined to disclose his or her name to the agency.

In brief, the whistleblower alleged that OCC ethics officials failed to provide departing employees with a required ethics notice. More specifically, the whistleblower alleged that:

- Pursuant to 5 C.F.R. § 730.104, agencies must provide written notice to senior employees of a statutory restriction on post-employment conflicts of interest; and
- OCC ethics officials have failed to provide the required notice since 2009.

The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 1213(a) and (b). If OSC finds, on the basis of the information disclosed, that there is a substantial likelihood that one of these conditions exists, I am required to advise the appropriate agency head of my findings, and the agency head is required to conduct an investigation of the allegations and prepare a report within 60 days of notification of the allegations. 5 U.S.C. § 1213(c) and (g). OSC will not routinely grant an extension of time to an agency in conducting a whistleblower disclosure investigation. However, OSC will consider an extension

The Special Counsel

The Honorable Jacob J. Lew

April 18, 2013

Page 2

request where an agency concretely evidences that it is conducting a good faith investigation that will require more time to successfully complete.

Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

In this matter, the whistleblower explained that pursuant to 18 U.S.C. § 207(c)(1), certain senior executive branch personnel are subject to a one-year restriction on contact with their former employing agencies upon their departure from federal employment, commonly known as a "cooling-off" period. Section 207(c)(2) specifies that "senior" positions are those for which the basic rate of pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule. In 2009, this amount was \$153,105. Currently, the salary threshold is \$155,440.

Agencies are required by 5 C.F.R. § 730.104 to provide written notice to employees covered by 18 U.S.C. § 207(c). This notice must be provided before, or as a part of, any personnel action that affects an employee's coverage under § 207(c)(1), such as an increase in pay that reaches the salary minimum of \$155,440. Section 730.104 also requires that a copy of the notice be forwarded to the Designated Agency Ethics Official or his or her delegate.

The whistleblower specified that due to the nature of its work and unique pay system, OCC has a high number of employees who are covered by 18 U.S.C. § 207(c). At a minimum, the whistleblower estimates at least 100 current employees are covered by the restriction, but that the number could be several times that. According to the whistleblower, OCC Law Department Headquarters ethics officials should notify employees of the restriction when they cross the pay threshold of \$155,440. Currently, these ethics officials include Jennifer Dickey, Special Counsel; Patricia Grady, Assistant Director; and David Kane, Director, all of the Administrative and Internal Law Division.

Prior to 2009, these notices were regularly sent to employees, as required, by Senior Counsels Brenda Curry and Barry Aldemeyer, both of the Administrative and Internal Law Division. However, the whistleblower alleged that in 2009, the agency stopped sending out the required ethics notices. Ms. Dickey was specifically and repeatedly made aware in 2011 of the lapse, but blamed the failure to send notices on the integration of the former Office of Thrift Supervision into the OCC. According to the whistleblower, this merger was completed in July 2011; however, to date the agency is still failing to provide the required notice to employees. Mr. Kane was also made aware

The Special Counsel

The Honorable Jacob J. Lew
April 18, 2013
Page 3

of the agency's failure in 2010, but according to the whistleblower, no action was taken to remedy the situation.

I have concluded that there is a substantial likelihood that the information that the whistleblower provided to OSC discloses a violation of law, rule, or regulation. As previously stated, I am referring this information to you for an investigation of the whistleblower's allegations and a report of your findings within 60 days of your receipt of this letter. By law, this report should be reviewed and signed by you personally. Nevertheless, should you delegate your authority to review and sign the report to the Inspector General, or any other official, the delegation must be specifically stated and must include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5). The requirements of the report are set forth at 5 U.S.C. § 1213(c) and (d). A summary of § 1213(d) is enclosed. Please note that where specific violations of law, rule, or regulation are identified, these specific references are not intended to be exclusive.

Further, in some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their claims. I urge you to take all appropriate measures to ensure that those reporting wrongdoing are protected from such retaliation and from other prohibited personnel practices, including informing those charged with investigating the whistleblower's allegations that retaliation is unlawful and will not be tolerated.

As required by 5 U.S.C. § 1213(e)(3), I will send copies of the report, along with any comments on the report from the whistleblower and any comments or recommendations from me, to the President and the appropriate oversight committees in the Senate and House of Representatives. Unless the report is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs, OSC will place a copy of the report in a public file in accordance with 5 U.S.C. § 1219(a). To prevent public disclosure of sensitive PII, OSC requests that you ensure that the report does not contain any sensitive PII, such as Social Security numbers, home addresses and phone numbers, personal e-mail addresses, dates and places of birth and personal financial information. OSC does not consider names and titles to be sensitive PII requiring redaction. Agencies are requested not to redact such information in reports provided to OSC for the public file.

The Special Counsel

The Honorable Jacob J. Lew

April 18, 2013

Page 4

Please refer to our file number in any correspondence on this matter. If you need further information, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 254-3604. I am also available for any questions you may have.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carolyn Lerner".

Carolyn N. Lerner

Enclosure

Cc: The Honorable Eric M. Thorson, Inspector General

Enclosure

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency¹ and shall include:

- (1) a summary of the information with respect to which the investigation was initiated;
- (2) a description of the conduct of the investigation;
- (3) a summary of any evidence obtained from the investigation;
- (4) a listing of any violation or apparent violation of law, rule, or regulation; and
- (5) a description of any action taken or planned as a result of the investigation, such as:
 - (A) changes in agency rules, regulations or practices;
 - (B) the restoration of any aggrieved employee;
 - (C) disciplinary action against any employee; and
 - (D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

To prevent public disclosure of personally identifiable information (PII), OSC requests that you ensure that the report does not contain any sensitive PII, such as Social Security numbers, home addresses and phone numbers, personal e-mail addresses, dates and places of birth, and personal financial information. With the exception of patient names, OSC does not consider names and titles to be sensitive PII requiring redaction. Agencies are requested not to redact such information in reports provided to OSC for inclusion in the public file.

¹ Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.

Attachment 2 – 5 C.F.R. Part 730

§ 730.101 Purpose.

This part implements 5 U.S.C. 7302, which requires agencies to provide written notice to senior executives and other individuals covered by 18 U.S.C. 207(c)(2)(A)(ii) that they are subject to certain post-employment conflict-of-interest restrictions in 18 U.S.C. 207(c).

§ 730.102 Definitions.

Agency means an Executive agency as defined in 5 U.S.C. 105, but does not include the General Accounting Office. Senior executive means a member of the Senior Executive Service (SES).

§ 730.103 Coverage.

(a) The following individuals are subject to the post-employment conflict-of-interest restrictions in 18 U.S.C. 207(c), as amended by section 1125(b)(1) of the National Defense Authorization Act for FY 2004:

(1) Any individual, including a senior executive, who is paid at a rate of basic pay equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule; and

(2) Any individual, including a senior executive, who as of November 23, 2003, was paid at a rate of basic pay, exclusive of any locality-based comparability payments under 5 U.S.C. 5304, equal to or greater than the rate of basic pay for level 5 of the Senior Executive Service on that date (i.e., \$134,000). These employees are subject to the post-employment restrictions through November 24, 2005, without regard to any subsequent changes in position or pay.

(b) Nothing in this part affects individuals serving in positions described in 18 U.S.C. 207(c)(2)(A)(i), (iii), (iv), or (v).

§ 730.104 Notification.

Agencies must provide written notification to senior executives and other individuals covered by the amendment to 18 U.S.C. 207(c)(2)(A)(ii) that they are subject to the post-employment conflict-of-interest restrictions in 18 U.S.C. 207, before, or as part of, any personnel action that affects the employee's coverage under 18 U.S.C. 207(c)(1), including when employment or service in a covered position is terminated. A copy of the written notice must be provided simultaneously to the Designated Agency Ethics Official (or his or her delegate). The written notice must include information on the applicable penalties or injunctions that may be imposed under 18 U.S.C. 216(a), (b), and (c) for violations of the post-employment restrictions in 18 U.S.C. 207(c). The notice also must indicate that employees covered by 18 U.S.C. 207(c) are subject to 18 U.S.C. 207(f), which imposes additional post-employment restrictions on representing, aiding, or advising certain foreign entities.

§ 730.105 Savings provision.

Any post-employment restrictions established under 18 U.S.C. 207 and applicable prior to the first day of the first pay period beginning on or after January 1, 2004, remain in effect.

Attachment 3 - April 29, 2013 email with attachments sent by AGC (GLER) to IG Counsel

This year's.

Rochelle F. Granat
Assistant General Counsel
(General Law, Ethics and Regulation)
Department of the Treasury
202-622-6052

From: Markham, Julia

Sent: Wednesday, April 24, 2013 3:22 PM

To: Abbott, Carolyn; Begg, Margaret E.; Brown, Annie; Canning, Gordon; Dalton, Learlie K; Donelan, Mary P; Doyle, Bernadine; Ford, Terry; Green, Melissa W; Hagans-Johnson, Leslie A.; Hickson, Catherine F.; Hyndman, Mervin; Jones, Angela L.; Kaptur, Kristina; Kogut, Kathleen; Krieg, David A.; Mayfield, Rhonda; McGruder, Debra L; Merkle, Allison K.; Mingo, Kimberly T; Motl, David; Nicholson, Lisa; Pointer, Patricia J.; Ratchford, Robert S; Riordan, Daniel T; Ruble, Sally; Simmons, Terri M.; Smith, Nancy A.; Thomas, Crystal G; Thornton, Randy L.; Tischer, Margaret; Bailey, Paula; 'Barczak, Kim'; Brown, Annie; Coleman, Sherri; Crawford, RoseMarie; 'DiCarlo, Angela'; Donelan, Mary P; Fogan, Anita; Gore, Deborah E.; Jones, Phyllis D; King, Philip J.; Kogut, Kathleen; 'Long, Rhonda G'; Lowe, Richard T.; Mayfield, Rhonda; McKinney, Andrea D; 'McMahon, Claudia D'; Minor, Mario; Mooney Magrogan, Deborah A; Nicholson, Lisa; Pabotoy, Barbara; Sharp, Carrie R.; Shaw, Aloma; Stevens, Stacey; Thomas, Crystal G; Walters, Tracy A.; Warren, Patti; Wilson, Kim

Cc: Adams, Shanda; Blair, Anita; Canning, Gordon; Cook, Ruth; Dreher, Megan; Harvey, Mariam; Hollis, Tricia; Markham, Julia; Martin, Becky; Oellermann, Manuela; Pabotoy, Barbara; Parks, David; Peterson, Darlene; Phillips, Dawn; Riordan, Daniel T; Singleton, Marcus; Steide, Kimberly; Sullivan, James; Tate, Lovie; Telepo, Jeffrey; Thomas, Pat; Tischer, Margaret; Cantu, Jesus I.; Connell, Lynn; Dalton, Learlie K; Hickson, Catherine F.; Mingo, Kimberly T; Ruble, Sally; Simmons, Terri M.; Granat, Rochelle; Cencer, Donna

Subject: Post-Employment Restrictions

FOR HUMAN RESOURCES OFFICERS AND EXECUTIVE RESOURCES CONTACTS

INFORMATION & ACTION - NOTIFICATION FOR INDIVIDUALS SUBJECT TO POST-EMPLOYMENT RESTRICTIONS

DESCRIPTION:

With new fiscally conservative times, speculation about future pay raises and increases in the number of employees retiring, we thought it would be a good time to issue our annual reminder about post-employment restrictions. Bureaus are required by 5 CFR 730 to provide written notification to "senior employees" who are subject to the post-employment restrictions at 18 USC 207(c) when taking personnel actions that affect the employees' coverage:

- A "senior employee" is an employee (e.g., PAS, SES, SL, or equivalent) whose rate of basic pay is greater than or equal to 86.5% of Level II of the Executive Schedule. Currently, the "threshold" amount for coverage is \$155,441.

- Typically, the “threshold” amount increases each year based on increases to the Executive Schedule, but because there was no Executive Schedule increase in 2013, the amount remains the same as last year: \$155,441.
- In addition, employees may find they become covered or lose coverage as a result of annual performance-based pay adjustments. Again this year, due to the governmentwide pay freeze, there were no annual performance-based pay adjustments. However, a few employees may have received increases based on position changes, and these increases may impact coverage.

Treasury has developed three sample memoranda that bureaus may use to provide senior employees with the required written notifications:

- (1) one for employees “entering” positions subject to coverage;
- (2) one for employees “exiting” positions subject to coverage, and
- (3) one for simply verifying that an employee is subject to coverage, when the coverage has not changed. Because there was no change in the “threshold” amount for 2013 and the pay freeze precluded nearly all individual pay adjustments, we suggest you issue the third notice to your “senior employees” to confirm/remind them of their coverage.

You should continue to use the other notices to notify employees who are entering or exiting “senior employee” positions based on new appointments, conversions, separations, terminations, or other actions. Regardless of the notices you use, you should always provide copies to your bureau ethics officials.

If you have any questions, please feel free to contact Barbara Pabotoy (202-622-1282), myself, or your bureau ethics official.

Julia J. Markham

U.S. Department of the Treasury

Office of Executive Resources

Phone: (202) 927-4370

Fax: (202) 622-2278

julia.markham@treasury.gov

SAMPLE NOTICE FOR EMPLOYEES ENTERING "SENIOR" POSITIONS

MEMORANDUM FOR < Insert Employee's Name >

FROM: < Insert Bureau Designee's Name >

SUBJECT: Notice of "Senior Employee" Status and Applicability of Post-Employment Restrictions

OPM regulations at 5 CFR 730 require agencies to provide written notification to employees who are subject to the post-employment conflict of interest restrictions at 18 U.S.C. 207(c) whenever a personnel action occurs that affects their coverage. This is to notify you that you are now a "senior employee" as a result of your <insert action, e.g., SES appointment, pay adjustment, conversion to new SL pay system> on <insert effective date>, and accordingly, you are now subject to 18 U.S.C. 207(c). A "senior employee" for these purposes is someone who occupies a position for which the rate of basic pay is equal to or greater than 86.5% of the rate for level II of the Executive Schedule, i.e., greater than or equal to <insert amount, e.g., \$155,441 for 2013>.

The post-employment restrictions at 18 U.S.C. 207(c) require that for one year after service in a "senior" position ends, no former "senior employee" may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he or she served in any capacity during the one-year period prior to ending service in that "senior" position, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he or she seeks official action by that employee. These post-employment restrictions will apply to you for one year after your service in a "senior" position as defined above ends.

"Senior employees" are also subject to the post-employment restrictions at 18 U.S.C. 207(f). This section provides that, for one year after service in a "senior" position ends, no former "senior employee" may knowingly, with the intent to influence a decision of an employee of a department or agency of the United States or any member of Congress in carrying out his or her official duties, represent a foreign entity before any department or agency of the United States or any member of Congress or aid or advise a foreign entity.

Penalties and injunctions for violating the post-employment restrictions are prescribed at 18 U.S.C. 216 (a), (b), and (c). They include:

- Imprisonment and/or fine: For engaging in conduct constituting an offense, imprisonment for not more than one year, a fine of not more than \$100,000, or both; for willfully engaging in conduct constituting an offense, imprisonment for not more than five years, a fine of not more than \$250,000, or both.
- Civil Action: The Attorney General may bring a civil action in the appropriate U.S. district court against any person who engages in conduct constituting an offense and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

- Injunction: If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense, the Attorney General may petition for and the appropriate U.S. district court may issue an order prohibiting that person from engaging in such conduct. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

If you have any questions about post-employment restrictions and how they apply to you, please contact <insert Ethics Official's name and phone/email>.

General information on post-employment restrictions is also available at:

http://intranet.treas.gov/ethics/employment/post_employment.asp

cc: Bureau Ethics Official

SAMPLE NOTICE FOR EMPLOYEES LEAVING "SENIOR EMPLOYEE" POSITIONS

MEMORANDUM FOR < Insert Employee's Name >

FROM: < Insert Bureau Designee's Name >
SUBJECT: Notice of "Senior Employee" Status and Applicability of Post-Employment Restrictions

OPM regulations at 5 CFR 730 require agencies to provide written notification to employees who are subject to the post-employment conflict of interest restrictions at 18 U.S.C. 207(c) whenever a personnel action occurs that affects their coverage. This is to notify you that you are no longer a "senior employee" as a result of your <insert action, e.g., separation, pay decrease, change to lower grade, etc.> on <insert effective date>. A "senior employee" for these purposes is someone who occupies a position for which the rate of basic pay is equal to or greater than 86.5% of the rate for level II of the Executive Schedule, i.e., greater than or equal to <insert amount, e.g., \$155,441 for 2013.>

However, based on your former service in a "senior" position, post-employment restrictions will apply to you for one year from the date of your <insert action, e.g., separation, pay decrease, change to lower grade, etc., that terminated service in the covered position>. This one year period will end on <insert date>.

The post-employment restrictions at 18 U.S.C. 207(c) require that for one year after service in a "senior" position ends, no former "senior employee" may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he or she served in any capacity during the one-year period prior to ending service in that "senior" position, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he or she seeks official action by that employee.

"Senior employees" are also subject to the post-employment restrictions at 18 U.S.C. 207(f). This section provides that, for one year after service in a "senior" position ends, no former "senior employee" may knowingly, with the intent to influence a decision of an employee of a department or agency of the United States or any member of Congress in carrying out his or her official duties, represent a foreign entity before any department or agency of the United States or any member of Congress or aid or advise a foreign entity.

Penalties and injunctions for violating the post-employment restrictions are prescribed at 18 U.S.C. 216 (a), (b), and (c). They include:

- Imprisonment and/or fine: For engaging in conduct constituting an offense, imprisonment for not more than one year, a fine of not more than \$100,000, or both; for willfully engaging in conduct constituting an offense, imprisonment for not more than five years, a fine of not more than \$250,000, or both.

- Civil Action: The Attorney General may bring a civil action in the appropriate U.S. district court against any person who engages in conduct constituting an offense and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.
- Injunction: If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense, the Attorney General may petition for and the appropriate U.S. district court may issue an order prohibiting that person from engaging in such conduct. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

If you have any questions about post-employment restrictions and how they apply to you, please contact <insert Ethics Official's name and phone/email>.

General information on post-employment restrictions is also available at:

http://intranet.treas.gov/ethics/employment/post_employment.asp

cc: Bureau Ethics Official

SAMPLE NOTICE FOR VERIFYING COVERAGE AS A "SENIOR EMPLOYEE"

MEMORANDUM FOR < Insert Employee's Name >

FROM: < Insert Bureau Designee's Name >

SUBJECT: Notice of "Senior Employee" Status and Applicability of
Post-Employment Restrictions

OPM regulations at 5 CFR 730 require agencies to provide written notification to "senior employees" who are subject to the post-employment conflict of interest restrictions at 18 U.S.C. 207(c) whenever a personnel action occurs that affects their coverage. A "senior employee" for these purposes is someone who occupies a position for which the rate of basic pay is equal to or greater than 86.5% of the rate for level II of the Executive Schedule, i.e., greater than or equal to <insert amount, e.g., \$155,441 for 2013.> This notice is to verify that based on your compensation at or above the salary threshold, you are a "senior employee" subject to 18 U.S.C. 207(c).

The post-employment restrictions at 18 U.S.C. 207(c) require that for one year after service in a "senior" position ends, no former "senior employee" may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he or she served in any capacity during the one-year period prior to ending service in that "senior" position, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he or she seeks official action by that employee. These post-employment restrictions will apply to you for one year after your service in a "senior" position as defined above ends.

"Senior employees" are also subject to the post-employment restrictions at 18 U.S.C. 207(f). This section provides that, for one year after service in a "senior" position ends, no former "senior employee" may knowingly, with the intent to influence a decision of an employee of a department or agency of the United States or any member of Congress in carrying out his or her official duties, represent a foreign entity before any department or agency of the United States or any member of Congress or aid or advise a foreign entity.

Penalties and injunctions for violating the post-employment restrictions are prescribed at 18 U.S.C. 216 (a), (b), and (c). They include:

- Imprisonment and/or fine: For engaging in conduct constituting an offense, imprisonment for not more than one year, a fine of not more than \$100,000, or both; for willfully engaging in conduct constituting an offense, imprisonment for not more than five years, a fine of not more than \$250,000, or both.

- Civil Action: The Attorney General may bring a civil action in the appropriate U.S. district court against any person who engages in conduct constituting an offense and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.
- Injunction: If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense, the Attorney General may petition for and the appropriate U.S. district court may issue an order prohibiting that person from engaging in such conduct. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

If you have any questions about post-employment restrictions and how they apply to you, please contact <insert Ethics Official's name and phone/email>.

General information on post-employment restrictions is also available at:

http://intranet.treas.gov/ethics/employment/post_employment.asp

cc: Bureau Ethics Official

Attachment 4 - OCC Notice to Departing Senior Employees 8/9/2010 version

Ethics Bulletin Board

Policy

Subject:	For Resigning or Retiring OCC Employees: Ethics Rules to Take with You	Document ID:	1997-215A
Author:	Barrett Aldemeyer and Jennifer Dickey	Date:	08/09/2010
Category:	Pre-exit Procedures		

PUBLIC SERVICE IS A PUBLIC TRUST

ETHICS RULES FOR RESIGNING OR RETIRING OCC EMPLOYEES

JUST BEFORE YOU LEAVE

ALL EMPLOYEES. Please print a copy of these rules to take with you! Also, get in touch with your ethics official for your ethics clearance before your departure.

FOR THOSE WHO WILL BE WORKING AT BANKS. If you are a covered employee for purposes of the borrowing rule and have accepted a position as an employee or consultant with a commercial bank (national or state-chartered) or an affiliate of a commercial bank, please remember to complete the Bank Employment Questionnaire. Instructions for accessing this form can be found under the subject heading "Pre-exit Procedures" on the Ethics Bulletin Board on the OCCnet.

FOR SENIOR OFFICIALS. Senior OCC employees who file the public financial disclosure report (SF 278) must file a final report within 30 days of the date when they leave the OCC. It should cover the period up to the date of their resignation or retirement.

ETHICS RULES AFTER YOU LEAVE

The following is a list of the major ethics rules applicable to OCC employees after they leave federal employment. Don't forget to look these rules over and take them with you. If you have questions about the rules, consult your ethics official -- either before or after you leave the OCC.

RESTRICTIONS APPLYING TO ALL FORMER EMPLOYEES

PERMANENT REPRESENTATIONAL BAR

A former employee, who personally and substantially participated in a particular matter involving a specific party or parties during any time of his or her federal employment, may not communicate with or appear before any executive or judicial branch employee on behalf of any other person about that matter after leaving the government. 18 U.S.C. 207(a)(1).

However, the former employee is NOT restricted unless the matter in which he or she personally and substantially participated was --

- A particular one involving specific parties, and
- The same one in which he or she now expects to represent another person before the government.

The requirement of a particular matter about a specific party or parties typically involves a specific proceeding on the legal rights of the parties or an isolated transaction, or related set of transactions, between identifiable parties. For the purposes of the restrictions in sections 207(a)(1) and (a)(2), the formulation of general policy standards or objectives, as in certain rulemaking or legislative proposals, IS NOT such a "particular matter."

PARTICIPATED PERSONALLY AND SUBSTANTIALLY means involvement in a particular matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise. To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the employee in a matter. "Substantially" means that an employee's involvement must be of significance to the matter, or form the basis for a reasonable appearance of such significance. It requires more than official responsibility, mere knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

The prohibition generally does not cover policy considerations. Therefore, for both the permanent representational bar and the two-year representational bar discussed next, a former employee, in most cases, may represent another person in a particular matter involving a specific party, even if general rules or policies the employee helped establish are involved in the proceeding.

EXAMPLE: An OCC examiner was personally responsible for the loan review in a recent examination of X National Bank. The examiner has now left the OCC and is working as a senior loan officer at X National Bank.

The examiner may not come before the OCC to represent X National Bank in discussions about the loan transactions she reviewed during the recent examination. She may, however, work on the review of these loans at X Bank and advise the bank about the loans, if she avoids disclosing confidential OCC information. In addition, she may respond to inquiries from the OCC concerning factual matters about the loans, but

she may not act as the bank's advocate in loan discussions.

Over time, as terms of these loans are revised or renegotiated, the former examiner may be able to represent the bank before the OCC on these loans, because they may no longer be the same "particular matter" in which she was involved during her service with the OCC. The former employee should discuss this issue with the appropriate ethics official before initiating any contact with OCC officials as an advocate for the bank on these loans.

TWO-YEAR REPRESENTATIONAL BAR

For two years after leaving the government, a former employee is prohibited from communicating with or appearing before any executive or judicial branch employee on behalf of any other person on a particular matter (as explained previously) involving specific parties the employee knows or reasonably should know was pending under his or her official responsibility during the last year of his or her federal employment. 18 U.S.C. 207(a)(2).

EXAMPLE: A former Assistant Deputy Comptroller (ADC) at the OCC has joined the staff of a national bank that was formerly under his supervision. He did not participate in any examinations of the bank, but reviewed the examination findings within the last year before he left the OCC.

For the first two years he is employed by the bank, the former ADC cannot come before the OCC to represent it on matters that he supervised during his last year at the OCC. In addition, to the extent that he participated personally and substantially in the decision-making, because, for example, he had more than a perfunctory involvement in the approval or disapproval of the bank's examination report, he may have a permanent bar from representing it before the OCC on certain matters related to that examination. The former employee is not prohibited from working on matters at the bank that he had previously handled at the OCC, as long as he does not disclose confidential OCC information.

Remember "particular matter" is not to be construed broadly. Therefore, a former employee, who participated in or reviewed only broad decisions about a bank's loan policies during his employment at the OCC, would not necessarily be prohibited from representing the bank before the OCC on a

specific loan transaction in the bank's loan portfolio.

ADDITIONAL RESTRICTIONS FOR SENIOR EMPLOYEES ONLY

A "senior employee" is any presidential appointee in a position for which the rate of pay is specified in the Executive Schedule and any other employee in a position for which the basic rate of pay is equal to or exceeds 86.5% of level II of the Executive Schedule. In the OCC, this includes the Comptroller and any other employee whose basic rate of pay at the time they leave federal employment (excluding geographic pay) is equal to or exceeds that amount (\$155,440 as of January 2010).

EXAMPLE: A Band VII employee, whose base pay (without geographic pay) is \$157,000, is leaving the OCC. Is this employee subject to the restrictions applying to "senior employees"?

Yes. Because the employee's base pay is greater than \$155,440, the employee is considered a "senior employee."

One-year Cooling Off Period

For one year following services in a senior position, a former senior employee may not knowingly and with intent to influence communicate with or appear before his former agency on behalf of any other person on any matter in which the former employee seeks official action. 18 U.S.C. 207(c). Although for nonpresidential appointees this restriction is limited to their former employing bureaus, e.g., the OCC, for former presidential appointees it applies to the entire Treasury Department.

EXAMPLE: A senior deputy comptroller leaves the OCC to return to employment in the private sector.

For the first year after his or her departure from the OCC, the senior deputy comptroller is prohibited from communicating with or appearing before the OCC on behalf of any other person to seek official action on any matter, including matters that he or she had not previously worked on or supervised.

One-year Foreign Entity Representational Bar

For one year following service in a senior position, a former employee may not represent a "foreign entity" (meaning a foreign government or political party, but not a foreign bank or foreign-controlled bank, unless it serves as an agency or delegatee of authority of a foreign government) before any

employee of the executive branch. In addition, the former senior employee may not aid or advise a foreign entity with the intent to influence a decision of an employee of the executive branch. 18 U.S.C. 207(f).

ONE-YEAR BANK COMPENSATION BAN FOR LARGE BANK OR MIDSIZE BANK EIC (EXAMINER-IN-CHARGE)

If you are a Large Bank or Midsize Bank EIC (examiner-in-charge), you are also prohibited for a period of one year after leaving federal employment from accepting compensation as an employee, officer, director, or consultant from the national bank for which you had continuing, broad responsibility for two of the preceding twelve months, from any parent company that controls this bank, and from any affiliated national banks for which you had supervisory responsibility. 12 U.S.C. 1820(k).

ADDITIONAL RESTRICTIONS

RULES OF PRACTICE BEFORE THE OCC

Under 12 CFR 4.36, an OCC employee or former employee may not, without authorization, disclose or permit disclosure of any nonpublic information to anyone other than an OCC employee properly entitled to such information. An employee or former employee, who is subpoenaed or otherwise requested to disclose nonpublic OCC information, must immediately notify the OCC and must not disclose the information without prior OCC approval.

ATTORNEYS

Government employees, who are attorneys, may be subject to additional restrictions under their applicable state bar rules.

REMOVAL OF RECORDS BY OFFICIALS WHO RESIGN OR RETIRE

Whether or not you are removing any nonrecord documents, you must print, read, and sign the Department of the Treasury Documentary Materials Removal/Nonremoval Certification form and forward it to your supervisor. If you plan to remove documents from the OCC, your supervisor must also sign the form acknowledging the records being removed.

[Date](#) | [Category](#) | [Subject](#)

Ethics Bulletin Board

Policy

Subject: For Resigning or Retiring OCC Employees: Document ID: 1997-215A
Ethics Rules to Take with You
Author: Barrett Aldemeyer and Jennifer Dickey Date: 05/21/2013
Category: Pre-exit Procedures

PUBLIC SERVICE IS A PUBLIC TRUST

ETHICS RULES FOR RESIGNING OR RETIRING OCC EMPLOYEES

JUST BEFORE YOU LEAVE

ALL EMPLOYEES. Please print a copy of these rules to take with you! Also, get in touch with your ethics official for your ethics clearance before your departure.

FOR THOSE WHO WILL BE WORKING AT BANKS. If you are a covered employee for purposes of the borrowing rule and have accepted a position as an employee or consultant with a commercial bank (national or state-chartered) or an affiliate of a commercial bank, please remember to complete the Bank Employment Questionnaire. Instructions for accessing this form can be found under the subject heading "Pre-exit Procedures" on the Ethics Bulletin Board on the OCCnet.

FOR SENIOR OFFICIALS. Senior OCC employees who file the public financial disclosure report (SF 278) must file a final report within 30 days of the date when they leave the OCC. It should cover the period up to the date of their resignation or retirement.

ETHICS RULES AFTER YOU LEAVE

The following is a list of the major ethics rules applicable to OCC employees after they leave federal employment. Don't forget to look these rules over and take them with you. If you have questions about the rules, consult your ethics official -- either before or after you leave the OCC.

RESTRICTIONS APPLYING TO ALL FORMER EMPLOYEES

PERMANENT REPRESENTATIONAL BAR

A former employee, who personally and substantially participated in a particular matter involving a specific party or parties during any time of his or her federal employment, may not communicate with or appear before any executive or judicial branch employee on behalf of any other person about that matter after leaving the government. 18 U.S.C. 207(a)(1).

However, the former employee is NOT restricted unless the matter in which he or she personally and substantially participated was --

- A particular one involving specific parties, and
- The same one in which he or she now expects to represent another person before the government.

The requirement of a particular matter about a specific party or parties typically involves a specific proceeding on the legal rights of the parties or an isolated transaction, or related set of transactions, between identifiable parties. For the purposes of the restrictions in sections 207(a)(1) and (a)(2), the formulation of general policy standards or objectives, as in certain rulemaking or legislative proposals, IS NOT such a "particular matter."

PARTICIPATED PERSONALLY AND SUBSTANTIALLY means involvement in a particular matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise. To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the employee in a matter. "Substantially" means that an employee's involvement must be of significance to the matter, or form the basis for a reasonable appearance of such significance. It requires more than official responsibility, mere knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

The prohibition generally does not cover policy considerations. Therefore, for both the permanent representational bar and the two-year representational bar discussed next, a former employee, in most cases, may represent another person in a particular matter involving a specific party, even if general rules or policies the employee helped establish are involved in the proceeding.

EXAMPLE: An OCC examiner was personally responsible for the loan review in a recent examination of X National Bank. The examiner has now left the OCC and is working as a senior loan officer at X National Bank.

The examiner may not come before the OCC to represent X National Bank in discussions about the loan transactions she reviewed during the recent examination. She may, however, work on the review of these loans at X Bank and advise the bank about the loans, if she avoids disclosing confidential OCC information. In addition, she may respond to inquiries from the OCC concerning factual matters about the loans, but

she may not act as the bank's advocate in loan discussions.

Over time, as terms of these loans are revised or renegotiated, the former examiner may be able to represent the bank before the OCC on these loans, because they may no longer be the same "particular matter" in which she was involved during her service with the OCC. The former employee should discuss this issue with the appropriate ethics official before initiating any contact with OCC officials as an advocate for the bank on these loans.

TWO-YEAR REPRESENTATIONAL BAR

For two years after leaving the government, a former employee is prohibited from communicating with or appearing before any executive or judicial branch employee on behalf of any other person on a particular matter (as explained previously) involving specific parties the employee knows or reasonably should know was pending under his or her official responsibility during the last year of his or her federal employment. 18 U.S.C. 207(a)(2).

EXAMPLE: A former Assistant Deputy Comptroller (ADC) at the OCC has joined the staff of a national bank that was formerly under his supervision. He did not participate in any examinations of the bank, but reviewed the examination findings within the last year before he left the OCC.

For the first two years he is employed by the bank, the former ADC cannot come before the OCC to represent it on matters that he supervised during his last year at the OCC. In addition, to the extent that he participated personally and substantially in the decision-making, because, for example, he had more than a perfunctory involvement in the approval or disapproval of the bank's examination report, he may have a permanent bar from representing it before the OCC on certain matters related to that examination. The former employee is not prohibited from working on matters at the bank that he had previously handled at the OCC, as long as he does not disclose confidential OCC information.

Remember "particular matter" is not to be construed broadly. Therefore, a former employee, who participated in or reviewed only broad decisions about a bank's loan policies during his employment at the OCC, would not necessarily be prohibited from representing the bank before the OCC on a

specific loan transaction in the bank's loan portfolio.

ADDITIONAL RESTRICTIONS FOR SENIOR EMPLOYEES ONLY

A "senior employee" is any presidential appointee in a position for which the rate of pay is specified in the Executive Schedule and any other employee in a position for which the basic rate of pay is equal to or exceeds 86.5% of level II of the Executive Schedule. In the OCC, this includes the Comptroller and any other employee whose basic rate of pay at the time they leave federal employment (excluding geographic pay) is equal to or exceeds that amount (\$155,440 as of January 2010).

EXAMPLE: A Band VII employee, whose base pay (without geographic pay) is \$157,000, is leaving the OCC. Is this employee subject to the restrictions applying to "senior employees"?

Yes. Because the employee's base pay is greater than \$155,440, the employee is considered a "senior employee."

One-year Cooling Off Period

For one year following services in a senior position, a former senior employee may not knowingly and with intent to influence communicate with or appear before his former agency on behalf of any other person on any matter in which the former employee seeks official action. 18 U.S.C. 207(c). Although for nonpresidential appointees this restriction is limited to their former employing bureaus, e.g., the OCC, for former presidential appointees it applies to the entire Treasury Department.

EXAMPLE: A senior deputy comptroller leaves the OCC to return to employment in the private sector.

For the first year after his or her departure from the OCC, the senior deputy comptroller is prohibited from communicating with or appearing before the OCC on behalf of any other person to seek official action on any matter, including matters that he or she had not previously worked on or supervised.

Penalties and injunctions for violations of the one-year cooling off restriction and other restrictions in 18 U.S.C. 207 are detailed below.

One-year Foreign Entity Representational Bar

For one year following service in a senior position, a former employee may

not represent a "foreign entity" (meaning a foreign government or political party, but not a foreign bank or foreign-controlled bank, unless it serves as an agency or delegatee of authority of a foreign government) before any employee of the executive branch. In addition, the former senior employee may not aid or advise a foreign entity with the intent to influence a decision of an employee of the executive branch. 18 U.S.C. 207(f).

PENALTIES AND INJUNCTIONS FOR VIOLATIONS OF POST-EMPLOYMENT RESTRICTIONS AT 18 U.S.C. 207

Penalties and injunctions for violating the post-employment restrictions at 18 U.S.C. 207 discussed above are prescribed at 18 U.S.C. 216 (a), (b), and (c). They include:

- Imprisonment and/or fine: For engaging in conduct constituting an offense, imprisonment for not more than one year, a fine of not more than \$100,000, or both; for willfully engaging in conduct constituting an offense, imprisonment for not more than five years, a fine of not more than \$250,000, or both.
- Civil Action: The Attorney General may bring a civil action in the appropriate U.S. district court against any person who engages in conduct constituting an offense and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.
- Injunction: If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense, the Attorney General may petition for and the appropriate U.S. district court may issue an order prohibiting that person from engaging in such conduct. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

ONE-YEAR BANK COMPENSATION BAN FOR LARGE BANK OR MIDSIZE BANK EIC (EXAMINER-IN-CHARGE)

If you are a Large Bank or Midsize Bank EIC (examiner-in-charge), you are also prohibited for a period of one year after leaving federal employment

from accepting compensation as an employee, officer, director, or consultant from the national bank for which you had continuing, broad responsibility for two of the preceding twelve months, from any parent company that controls this bank, and from any affiliated national banks for which you had supervisory responsibility. 12 U.S.C. 1820(k).

ADDITIONAL RESTRICTIONS

RULES OF PRACTICE BEFORE THE OCC

Under 12 CFR 4.36, an OCC employee or former employee may not, without authorization, disclose or permit disclosure of any nonpublic information to anyone other than an OCC employee properly entitled to such information. An employee or former employee, who is subpoenaed or otherwise requested to disclose nonpublic OCC information, must immediately notify the OCC and must not disclose the information without prior OCC approval.

ATTORNEYS

Government employees, who are attorneys, may be subject to additional restrictions under their applicable state bar rules.

REMOVAL OF RECORDS BY OFFICIALS WHO RESIGN OR RETIRE

Whether or not you are removing any nonrecord documents, you must print, read, and sign the Department of the Treasury Documentary Materials Removal/Nonremoval Certification form and forward it to your supervisor. If you plan to remove documents from the OCC, your supervisor must also sign the form acknowledging the records being removed.

[Date](#) | [Category](#) | [Subject](#)

Attachment 6 - OCC memo to OIG outlining plan for 207(c) notice compliance

OCC Plan to Disseminate Notices Required by 5 CFR Part 730

Background

- OPM regulations at 5 CFR Part 730 require agencies to provide written notification of certain post-employment restrictions at 18 U.S.C. 207(c) to senior executives and other individuals covered by 18 U.S.C. 207(c)(2)(A)(ii) before or as part of any personnel action that affects their coverage, including at termination.
- Covered employees currently include employees whose base pay meets or exceeds \$155,441.
- The "post-employment restrictions in 18 U.S.C. 207(c) apply to covered employees without regard to whether they receive written notice from their employing agency." 5 CFR 730.104(b)

OCC Practice 2009 to 2012

- OCC ethics officials have been providing information about the 18 U.S.C. 207(c) restrictions to all departing employees as part of a written summary of the post-employment restrictions. This notice includes a specific example about the 18 U.S.C. 207(c) restriction. This notice, however, did not include information about the penalties for violations of this restriction, as required by 5 CFR 730.104(a).
- In 2010, the headquarters ethics counsel focused on the post-employment restrictions, including the 18 U.S.C. 207(c) restrictions, in the annual ethics training for public financial disclosure filers (i.e., all Band 8 and Band 9 employees).
- In 2011, the headquarters ethics counsel via an e-mail to all employees disseminated an ethics bulletin on handling contacts with former employees, which provided specific guidance on the one-year cooling off restriction in 18 U.S.C. 207(c).
- With respect to notifications to employees when they first became subject to the provision, the prior Director of the Employment Policy and Services Division (Human Resources) and a prior headquarters ethics counsel had developed a process for disseminating the notifications.
- In 2009 and 2010, these key personnel departed and the manual process they had managed did not survive their departures. (In 2009, the OCC headquarters ethics official died, and the position remain unfilled by a full-time ethics counsel until late June 2010. In early 2010, the Director for Employment Policy and Services retired.)
- Following their departures, although the OCC was aware of the notice requirement, the lack of an automated process coupled with the press of other work demands resulted in a program lapse in issuing this set of notifications, that is, notifications when employees first became subject to the post-employment restrictions.

Remedy

- In 2013, prior to the OCC's knowledge of the present complaint, Human Resources and headquarters ethics counsel had begun discussing procedures for notifying employees of the 18 U.S.C. 207(c) restrictions.
- Human Resources will now assume responsibility for sending notices to employees who enter into a covered position as a result of a personnel action. This practice adopts the procedures outlined in the regulations at 5 CFR 730. Human Resources will provide a copy of these notices to the headquarters ethics counsel.
- Human Resources will explore ways to automate this process. In the meantime, Human Resources will send out Treasury's standard 18 U.S.C. 207(c) notices manually either before or as part of a personnel action that affects an employee's coverage under 18 U.S.C. 207(c)(1).
- To ensure that current employees who have entered into a covered position since 2009 have received this notice, Human Resources will provide the headquarters ethics counsel a list of e-mail addresses for all current employees whose base pay meets or exceeds the salary threshold. The headquarters ethics counsel will e-mail Treasury's standard 18 U.S.C. 207(c) notice to all covered employees.
- OCC ethics officials will continue to send out the standard written summary of the post-employment restrictions, which includes information on the 18 U.S.C. 207(c) restrictions, to all departing employees. In addition, OCC ethics officials will disseminate Treasury's standard 18 U.S.C. 207(c) to all departing employees.

Attachment 7 - OCC email to senior employees providing 207(c) notice

June 2013 OCC Notice to Senior Employees

6/10 email from David Kane:

Rich, here is a copy of the notice that was sent out to all existing senior employees on 6/7.

From: Dickey, Jennifer

Sent: Friday, June 07, 2013 2:28 PM

To: Kane, David

Subject: Notice of "Senior Employee" Status and Applicability of Post-Employment Restrictions

To: Senior Employees:

From: Jennifer Dickey, Ethics Counsel

Subject: Notice of "Senior Employee" Status and Applicability of Post-Employment Restrictions

OPM regulations at 5 CFR 730 require agencies to provide written notification to "senior employees" who are subject to the post-employment conflict of interest restrictions at 18 U.S.C. 207(c) whenever a personnel action occurs that affects their coverage. A "senior employee" for these purposes is someone who occupies a position for which the rate of basic pay is equal to or greater than 86.5% of the rate for level II of the Executive Schedule, i.e., greater than or equal to \$155,441 for 2013.

Some "senior employees" did not receive this notice at the time they were promoted or otherwise first became subject to the restrictions. To remedy this, we are providing this notice to all current employees who, based on their pay, are subject to the restrictions at 18 U.S.C. 207(c). This notice is to verify that based on your compensation at or above the salary threshold, you are a "senior employee" subject to 18 U.S.C. 207(c).

This notice includes important information below about certain restrictions, such as the one-year cooling off period, which will apply to you after you leave government service.

The post-employment restrictions at 18 U.S.C. 207(c) require that for one year after service in a "senior" position ends, no former "senior employee" may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he or she served in any capacity during the one-year period prior to ending service in that "senior" position, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which he or she seeks official action by that employee. These post-employment restrictions will apply to you for one year after your service in a "senior" position as defined above ends.

"Senior employees" are also subject to the post-employment restrictions at 18 U.S.C. 207(f). This section provides that, for one year after service in a "senior" position ends,

no former "senior employee" may knowingly, with the intent to influence a decision of an employee of a department or agency of the United States or any member of Congress in carrying out his or her official duties, represent a foreign entity before any department or agency of the United States or any member of Congress or aid or advise a foreign entity.

Penalties and injunctions for violating the post-employment restrictions are prescribed at 18 U.S.C. 216 (a), (b), and (c). They include:

- Imprisonment and/or fine: For engaging in conduct constituting an offense, imprisonment for not more than one year, a fine of not more than \$100,000, or both; for willfully engaging in conduct constituting an offense, imprisonment for not more than five years, a fine of not more than \$250,000, or both.
- Civil Action: The Attorney General may bring a civil action in the appropriate U.S. district court against any person who engages in conduct constituting an offense and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.
- Injunction: If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense, the Attorney General may petition for and the appropriate U.S. district court may issue an order prohibiting that person from engaging in such conduct. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

If you have any questions about the post-employment restrictions that apply to you, please contact Jen Dickey, headquarters ethics counsel, at (202) 649-5584, or your district ethics official. Contact information for your OCC ethics official is available on the Ethics Page on the OCCnet at <http://occnet.occ/ethicsguidance.asp>. On this page you will also find additional information on these and other post-employment restrictions in the ethics bulletin on Post-Employment Restrictions.