

June 2010

FORMER FEDERAL TRADE OFFICIALS

Laws on Post- Employment Activities, Foreign Representation, and Lobbying



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Highlights of [GAO-10-766](#), a report to congressional requesters

Why GAO Did This Study

Congress has enacted laws to safeguard against former federal employees, including former trade officials, from using their access to influence government officials. These former officials' post-employment activities are restricted by a federal conflict of interest law, known as the "Revolving Door" law. Two other laws—the Foreign Agents Registration Act (FARA) and the Lobbying Disclosure Act (LDA)—are disclosure statutes that do not prohibit any activities per se, but require individuals conducting certain representation activities to publicly disclose them. FARA and LDA are not specific to former federal officials; they apply to all individuals.

GAO was asked to provide a summary of the Revolving Door law, FARA, and LDA. GAO reviewed these laws, as well as guidance from the Office of Government Ethics (OGE). GAO interviewed ethics officials at three agencies whose missions focus on trade—the United States Trade Representative (USTR), the International Trade Administration (ITA), and the International Trade Commission (USITC)—and collected data on the number of senior officials who separated from these agencies from 2004 through 2009. In addition, GAO interviewed Department of Justice (Justice) officials concerning enforcement of these laws. GAO makes no recommendations in this report.

View [GAO-10-766](#) or key components. For more information, contact Loren Yager at (202) 512-4347 or yagerl@gao.gov.

FORMER FEDERAL TRADE OFFICIALS

Laws on Post-Employment Activities, Foreign Representation, and Lobbying

What GAO Found

Post-employment restrictions in the Revolving Door law, codified at 18 U.S.C. § 207, prohibit some federal employees from engaging in certain activities, such as communicating with their former agency with the intent to influence government action, for a specified period of time after leaving federal service. The restrictions include a ban, for 1 year, on all former senior and very senior employees of federal agencies from representing, aiding, or advising a foreign government or political party with the intent to influence a government official, including the President, Vice President, and members of Congress. Level of pay and certain designated positions are used to categorize employees as "senior" or "very senior." A life-time ban on representing or advising foreign entities in this capacity applies to former U.S. Trade Representatives and Deputy Trade Representatives. In addition, all former federal employees who participated personally and substantially in an ongoing treaty negotiation are prohibited for 1 year from aiding any other person in that negotiation, if the employee had access to certain nonpublic information. Ethics officials at USTR, ITA, and USITC reported that they counsel current, as well as former, employees on post-employment restrictions. Justice officials said they viewed the Revolving Door law as being more useful as a preventative measure rather than a tool for prosecution; they believed that guidance from agency ethics officials deterred most violations.

In contrast to post-employment restrictions specific to former government officials, FARA and LDA are disclosure laws that require all individuals, unless exempt, to publicly disclose certain foreign representation or lobbying activity. Individuals who act as agents of foreign governments or foreign political parties must register with Justice's Registration Unit. Individuals who conduct a certain amount of lobbying must register with the Secretary of the Senate and the Clerk of the House of Representatives. Both FARA and LDA disclosure information is publicly available.

Comparison of the Revolving Door, FARA, and LDA Laws

	Revolving Door	FARA	LDA
Individuals affected	Federal executive branch employees as well as certain restrictions for members of Congress, their staff, and legislative branch employees.	All individuals acting, in the United States, as agents of foreign principals.	All individuals working as lobbyists a certain percentage of the time.
Purpose	Conflict of interest law that prohibits certain activities with the intent to influence government action for various periods of time once the employee leaves federal employment.	Disclosure law that requires registration with Justice's Registration Unit. Foreign agents' registration records publicly available.	Disclosure law that requires registration with the Secretary of the Senate and the Clerk of the House of Representatives. Lobbyists' registration records publicly available.

Source: GAO analysis of Revolving Door, FARA, and LDA.

Note: Further Revolving Door limitations are placed on procurement personnel. Exemptions exist for Revolving Door, FARA, and LDA.

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Abbreviations

FARA	Foreign Agents Registration Act
ITA	International Trade Administration
USITC	U.S. International Trade Commission
LDA	Lobbying Disclosure Act
OGE	Office of Government Ethics
USTR	Office of the United States Trade Representative

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United States Government Accountability Office
Washington, DC 20548

June 23, 2010

Congressional Requesters

Congress has enacted laws to safeguard against former federal employees, including employees who may have been involved in the development and negotiation of trade policy, from using their access to influence government officials. When former federal employees separate from government service, their post-employment activities are restricted by a federal conflict of interest law, known as the "Revolving Door" law.¹ This law prohibits federal employees from engaging in certain activities with the intent to influence government action for various periods of time once they have left federal government employment. With the signing of Executive Order 13490 in January 2009, President Obama has placed additional emphasis on ethics commitments for executive branch personnel, requiring each of his full-time, non-career appointees to sign an ethics pledge that lengthens the time of certain post-employment restrictions applicable to them and prohibits them from engaging in certain lobbying activities for the remainder of the Obama administration.

In addition to these post-employment restrictions, there are certain registration requirements for representational activities that affect all individuals, not just former government personnel. The Foreign Agents Registration Act (FARA) requires all individuals who act on behalf of foreign principals² to disclose this activity by publicly registering with the Department of Justice (Justice). The Lobbying Disclosure Act (LDA), as amended, requires individuals acting as lobbyists to publicly register their

¹For this report, the term "post-employment restrictions" refers to the laws codified at 18 U.S.C. § 207, which contains restrictions on former officers, employees, and elected officials of the executive and legislative branches. Other ethics laws applicable to government employees, such as personal financial interest laws, are not addressed here. In addition, we do not address the limitations placed upon the post-employment activities of procurement personnel in federal agencies.

²"Foreign principals" include governments of foreign countries, foreign political parties, and other individuals and organizations as defined in the Foreign Agents Registration Act. See the sidebar on page 13 for a description of these terms. 22 U.S.C. § 611(b).

activity with the Secretary of the Senate and the Clerk of the House of Representatives.³

In response to your request to provide information on the post-employment activities of former government personnel who were involved in the development and implementation of trade policy, we are providing a summary and comparison of the relevant federal laws governing post-employment activities, foreign representation, and lobbying. This information includes data on the number of senior officials who separated from the Office of the United States Trade Representative (USTR), the Department of Commerce's International Trade Administration (ITA), and the United States International Trade Commission (USITC) from 2004 through 2009, as well as information on the number of these officials who registered under FARA or LDA.

To address this objective, we reviewed the relevant laws and regulations governing post-employment restrictions, foreign representation, and lobbying activities. We interviewed officials from the Office of Government Ethics (OGE) regarding interpretation and implementation of post-employment restrictions. We interviewed ethics officials from USTR, ITA, and USITC regarding these laws and the guidance they provide to current and former employees of their respective agencies. We included USTR and ITA in our scope because their respective missions concern trade policy formulation and trade promotion. We included the USITC because of its role in administering U.S. trade remedy laws and providing independent analysis on trade matters. We interviewed Justice officials regarding administration of FARA and enforcement actions for post-employment restrictions and FARA. We obtained data on the number of former senior officials who separated from USTR, ITA, and USITC from 2004⁴ through 2009 from each of the respective agencies as well as from

³GAO has conducted prior work on FARA and LDA, as well as work on the procurement-related aspects of the Revolving Door law. Recent reports include GAO, *Post-Government Employment Restrictions and Foreign Agent Registration: Additional Action Needed to Enhance Implementation of Requirements*, [GAO-08-855](#) (Washington, D.C.: July 30, 2008); *2009 Lobbying Disclosure: Observations on Lobbyists' Compliance with Disclosure Requirements*, [GAO-10-499](#) (Washington, D.C.: Apr. 1, 2010); and *Defense Contracting: Post-Government Employment of Former DOD Officials Needs Greater Transparency*, [GAO-08-485](#) (Washington, D.C.: May 21, 2008).

⁴Level of pay and certain designated positions are used to categorize employees as "senior" or "very senior" under post-employment restrictions. We chose to obtain data on former senior officials separated from USTR, ITA, and USITC from 2004 through 2009 because that definition of "senior" changed in November 2003 as a result of changes to the senior executive service compensation system.

the Office of Personnel Management's Central Personnel Data File. We focused our work specifically on the number of former senior officials separated from these agencies because post-employment restrictions are more stringent for former senior and very senior officials, although we also obtained the number of all separated employees from these three agencies from the Central Personnel Data File for contextual purposes. From Justice, we obtained data on the number of these former senior officials who had registered under FARA after separating from the government. From the Clerk of the House of Representatives, we obtained data on the number of these former senior officials who had registered as lobbyists after separating from the government. We did not assess any former officials' compliance with post-employment restrictions, nor did we determine if individuals who did not register under FARA or LDA should have registered. We assessed the reliability of data on former officials separated from USTR, ITA, and USITC, as well as data on FARA and LDA registrations and found the data to be sufficiently reliable for our purposes.

We conducted our work from January 2010 to June 2010 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objective. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for the findings in this product. For additional details regarding our scope and methodology, see appendix I.

Background

In 1962, the U.S. government enacted conflict of interest laws that were designed to protect against the improper use of influence and government information by former employees, as well as to limit the potential influence that a prospective employment arrangement may have on current federal officials when dealing with prospective private clients or future employers while still in government service. Congress broadened post-employment restrictions as part of the Ethics Reform Act of 1989, including, for example, a restriction against certain former government officials representing, aiding, or advising on foreign entities.⁵ The executive branch promotes compliance with post-employment restrictions through agency ethics-in-government programs, which are guided by OGE,

⁵18 U.S.C. § 207(f).

an executive branch agency. OGE is responsible for providing overall direction to executive branch policies related to preventing conflicts of interests on the part of officers and employees of any executive agency. Individual agencies are responsible for the day-to-day administration of their own ethics programs.

In contrast to post-employment restrictions specific to former government personnel, there are federal disclosure statutes concerning foreign representation and lobbying activities that affect all individuals. Enacted in 1938, FARA is a disclosure law that requires all individuals in the United States working as agents of a foreign principal to publicly disclose these connections. LDA is a disclosure law that requires all individuals working a certain percentage of the time as lobbyists to publicly disclose these activities. Lobbying regulations began with the Federal Regulation of Lobbying Act of 1946, which required lobbyists to disclose the identities of their clients, report the receipts and expenses involved, and describe the nature of the legislative objectives that were pursued for each client. Lobbying was interpreted under the 1946 act as direct communication with a member of Congress in an attempt to influence the passage or defeat of any proposed or pending legislation. Congress replaced this law with the Lobbying Disclosure Act of 1995, which expanded the definition of lobbying to include communications with “covered”⁶ employees in both the legislative and executive branch regarding legislation, regulations, policies, or the nomination or confirmation of a person for a position subject to confirmation by the Senate.

⁶“Covered employees” are executive branch employees serving in positions on the Executive Schedule and other high-ranking executive branch officials, members of Congress and their employees, and certain other legislative branch employees.

Post-Employment Restrictions for Former Federal Officials and Disclosure Laws Related to Foreign Representation and Lobbying

Post-employment restrictions in the Revolving Door law prohibit federal employees from engaging in certain conduct with the intent to influence government officials for a specified period of time after leaving federal employment. In contrast to post-employment restrictions for former government officials, the disclosure laws in FARA and LDA are not specific to former government employees. FARA and LDA do not prohibit any activities; rather, they require individuals engaging in certain foreign representation and lobbying activities to make these activities public. Table 1 describes the key attributes of the three laws.

Table 1: Comparison of the Revolving Door, FARA, and LDA Laws

	Revolving Door	FARA	LDA
Individuals affected	Federal executive branch employees as well as certain restrictions for members of Congress, their staff, and legislative branch employees.	All individuals acting, in the United States, as agents of foreign principals.	All individuals working as lobbyists a certain percentage of the time.
Purpose	Conflict of interest law that prohibits certain activities with the intent to influence government action for various periods of time once the employee has left federal government employment. Further limitations are placed upon the post-government private employment activities of former procurement personnel.	Disclosure law that requires registration with Justice's Registration Unit. Foreign agents' registration records are publicly available.	Disclosure law that requires registration with the Secretary of the Senate and the Clerk of the House of Representatives. Lobbyists' registration records are publicly available.
Exemptions	Some post-employment restrictions do not apply to certain duties carried out by elected officials; testimony given under oath; communications made on behalf of educational, medical, or international organizations; communications made for providing scientific information, if approved by the former agency and with OGE consultation; and certain political candidates' communications.	Numerous exemptions exist for legal, commercial, diplomatic, religious, scholastic, scientific, and humanitarian activities, and for instances in which the foreign principal is a foreign government, the defense of which the President has deemed vital to the interest of the United States. In addition, certain individuals registered under LDA are exempt from registering under FARA.	Communications made on behalf of a foreign government or foreign political party by an individual registered under FARA are not considered "lobbying contacts," and these individuals are exempt from LDA registration. Lobbyists who do not meet certain financial thresholds for their lobbying activities are not required to register.
Compliance and enforcement	The Department of Justice investigates and prosecutes criminal and civil violations.	Justice's Registration Unit relies primarily on foreign agents' voluntary compliance. The Registration Unit sends letters of inquiry to individuals it considers potential registrants.	The Secretary of the Senate and Clerk of the House of Representatives refer cases of noncompliance to the U.S. Attorney's Office for the District of Columbia.
Penalties	Civil and criminal penalties exist for knowing and willful violations of the law.	Civil and criminal penalties exist for willful violations of FARA requirements and for willful false statements or omissions on FARA registration statements and supplements.	Civil penalties exist for knowingly failing to comply with the law. Criminal penalties exist for knowingly and corruptly failing to comply with the law.

Source: GAO analysis of Revolving Door, FARA, and LDA.

Revolving Door Law

Revolving Door Restrictions More Stringent for Former Senior and Very Senior Officials

The post-employment restrictions contained in the Revolving Door law prohibit categories of former federal employees from conducting certain activities, with the intent to influence government officials, for various periods of time once they have left federal government employment. Most executive branch employees are affected by only one restriction: a life-time ban on “switching sides,” that is, representing any person with the intent to influence, in a communication to or appearance before a government official, in connection with a matter (1) in which the United States is a party or has a direct and substantial interest, (2) in which the former executive branch employee had worked personally and substantially for the government, and (3) that involved specific parties at the time of the former employee’s participation. Additional restrictions, however, apply to senior or very senior employees: a 1-year “cooling off” period bars certain former senior employees from representing anyone with the intent to influence individuals at their former agency and a 2-year “cooling off” period bars former very senior employees’ representation and attempted influence concerning any matter. These former senior and very senior employees are also banned for 1 year from representing, aiding, or advising foreign entities with the intent to influence a decision of a government official, and former U.S. Trade Representatives and Deputy Trade Representatives are banned for life from such activity.

Level of pay and certain designated positions are used to categorize employees as “senior” or “very senior.” Senior employees include employees whose rate of pay is specified in or fixed according to the Executive Schedule, as well as certain other employees who hold specific appointed positions⁷ or who meet a specific financial threshold—86.5 percent of Executive Schedule Level II.⁸ Most employees in the Senior Executive Service are considered senior employees under the Revolving Door law because their pay exceeds this financial threshold. “Very senior employees” include employees whose rate of pay is equal to the rate of pay

⁷5 C.F.R. § 2641.104.

⁸In 2009, employees at Level II of the Executive Schedule earned \$177,000 annually; 86.5 percent of that is \$153,105.

for Level I⁹ of the Executive Schedule, and employees in certain other named and appointed positions.¹⁰

The number of senior and very senior officials separating from USTR, ITA, and USITC, and to whom certain Revolving Door restrictions apply, varies from year to year. From 2004 through 2009, a total of 19 senior or very senior officials separated from USTR, 47 separated from ITA, and 5 separated from USITC (see fig. 1).

Figure 1: Number of Senior and Very Senior Officials Who Separated from USTR, ITA, and USITC, 2004 - 2009

Agency		2004	2005	2006	2007	2008	2009	Total
USTR	Number of all separations	15	25	23	29	24	28	144
	Number of separations that were senior or very senior employees	2	4	2	3	2	6	19
ITA	Number of all separations	178	175	185	108	103	108	857
	Number of separations that were senior or very senior employees	8	12	10	3	6	8	47
USITC	Number of all separations	64	67	62	54	58	56	361
	Number of separations that were senior or very senior employees	0	2	0	2	0	1	5
Total	Number of all separations	257	267	270	191	185	192	1,362
	Number of separations that were senior or very senior employees	10	18	12	8	8	15	71

Source: GAO analysis of data provided by USTR, ITA, USITC and the Office of Personnel Management's Central Personnel Data File data.

Note: The table does not include individuals who separated from one federal agency to transfer to another; it only includes individuals who separated entirely from government service.

One section of the Revolving Door law is of specific relevance to former officials who participated in treaty negotiations. This section prohibits all former employees (regardless of level) who participated personally and substantially in ongoing treaty negotiations for 1 year from aiding or

⁹Employees at Level I of the Executive Schedule earned \$196,700 in 2009.

¹⁰5 C.F.R. § 2641.104.

USTR, ITA, and USITC Ethics
Officials Train Current
Employees and Advise Former
Employees on Revolving Door
Restrictions

advising any other person in that treaty negotiation, on the basis of certain “covered” information to which the employee had access.¹¹ This section of the law also used to apply to employees who negotiated certain trade agreements; however, the specific definition of “trade agreements” as used in the section of the law refers only to the “fast track” trade agreement authority that expired in 1993.¹² According to OGE, when Congress restored similar fast track authority in 2002, it did so by creating new authority¹³ rather than by amending the prior fast track provisions that are referenced in the section of the Revolving Door law, and made no conforming changes to reference the new fast track provisions. Consequently, the prohibition no longer applies to former government employees who negotiated trade agreements. As a result, former employees may advise another party on “covered” information related to trade negotiations as long as doing so would not violate other provisions of the Revolving Door law. OGE did not take a position on whether this section of the law should be amended to again cover fast track trade agreement authority.¹⁴ However, an OGE official told us that the Revolving Door prohibition relating to trade negotiations had applied only in relatively narrow circumstances, for example when the employee used information that he or she knew was designated as exempt from disclosure under the Freedom of Information Act. See appendix II for a more detailed discussion of all post-employment restrictions in the Revolving Door law.

Ethics officials at USTR, ITA, and USITC described a variety of activities they use to inform senior employees of the post-employment restrictions, such as conducting training programs and providing counseling to former employees. Ethics officials at all three agencies told us that they provide special, one-on-one counseling to senior officials separating from the government regarding what post-employment activities are permitted. They said that they also advise former employees who contact them with questions on post-employment restrictions. The ethics officials at the three

¹¹According to OGE regulations, “covered information” means agency records that the employees had access to and which the employee knew or should have known were designated exempt from disclosure under the Freedom of Information Act. See 5 C.F.R. § 2641.203.

¹²See 19 U.S.C. § 2902.

¹³See 19 U.S.C. § 3803.

¹⁴See OGE, *Report to the President and to Congressional Committees on the Conflict of Interest Laws Relating to Executive Branch Employment* (January 2006).

agencies described the ethics training they provide that is specific to post-employment restrictions:

- **USTR.** According to USTR's designated ethics official, all new employees receive training from the Executive Office of the President's Office of Administration as well as an additional briefing from a USTR ethics official on issues of particular concern to USTR. New senior employees receive one-on-one training. Current employees receive annual ethics training during which employees are encouraged to contact the ethics official with any questions or concerns regarding contact they receive from former employees. All separating employees receive one-on-one training that addresses the post-employment provisions applicable to them; they also receive an outline of the post-employment restrictions. This counseling is documented on the employees sign out form, which is retained by the agency. Senior employees complete financial disclosure reports that identify any agreements they have for future employment. Separating employees are informed that they may contact the USTR ethics official after leaving the agency to ask questions on post-employment restrictions. The USTR ethics official said that many former employees do contact the ethics office; specific advice provided is documented in either an e-mail or in notes of the conversation.
- **ITA.** According to a Commerce ethics official, all new ITA employees located in the Washington, D.C., area receive an in-person briefing at the time of appointment; employees located outside of Washington, D.C., receive a written copy of the summary of ethics rules for new employees. All ITA officials appointed by the President receive individual ethics briefings from the Assistant General Counsel for Administration, upon appointment and each year thereafter, including a post-employment briefing. Current ITA employees who are required to file a private or public financial disclosure report (which includes all senior officials) receive a written copy of the summary of ethics rules and those in the Washington, D.C., area attend an in-person ethics briefing every year. The ethics office also routinely provides in-person briefings at regional conferences to ITA employees stationed at foreign posts. The office also provides individual briefings to separating ITA officials upon request. The office typically provides a 1-page summary of the post-employment restrictions and/or a 17-page detailed summary of the post-employment restrictions for employees requesting post-employment guidance. A Commerce ethics official reported that former ITA officials have contacted the ethics office for post-employment guidance on numerous occasions.
- **USITC.** According to an USITC ethics official, all employees separating from the USITC have one-on-one meetings with an ethics official to

receive counseling and documentation on post-employment restrictions. Senior officials receive specific information regarding the parts of the Revolving Door restrictions specific to them. All separating employees must sign a form to acknowledge receipt of a memorandum describing the post-employment restrictions. Attached to the memorandum is OGE guidance on post-employment restrictions, a copy of the Revolving Door law, and various other information regarding how ethics rules apply to former officials' post-employment activities. The packet also contains information on a rule specific to the USITC: no former officer or employee of the USITC **who personally and substantially participated in a matter** that was pending in any manner or form before the USITC during his or her employment shall be eligible to appear before the USITC as attorney or agent in connection with such matter. No former officer or employee of the USITC shall be eligible to appear as attorney or agent before the USITC in connection with **any matter** that was pending in any manner or form before the USITC during his or her employment, unless he or she first obtains written consent from the USITC.¹⁵ The memorandum also explains that the USITC's ethics counseling service is available to employees with any questions concerning post-employment activities.

Revolving Door Enforcement

Former government officials who violate the Revolving Door law may be subject to criminal and civil penalties.¹⁶ Anyone knowingly engaging in prohibited activity can be imprisoned for up to 1 year, or fined for each violation, or both. Any person who willfully engages in conduct violating the provisions of the law may be imprisoned for up to 5 years, or fined for each violation, or both. In addition to criminal punishment, the Attorney General is authorized to bring civil suits against anyone who violates the law. If found to have engaged in misconduct, the defendant can be subject to a civil penalty up to \$50,000 for each violation, or the amount of compensation that he or she received or was offered for the prohibited conduct, whichever is greater. Finally, the Attorney General may also petition for injunctive relief in federal court to prevent the defendant from engaging in conduct that violates the law.

According to Justice officials, the U.S. Attorneys' offices and Justice's Criminal and Civil Divisions investigate allegations of Revolving Door

¹⁵19 C.F.R. § 201.15(b).

¹⁶Our discussion on enforcement of the Revolving Door law refers only to enforcement of 18 U.S.C § 207, the sections of the law related to post-employment activities of former federal employees.

violations in conjunction with Inspectors General.¹⁷ Justice officials reported that the record of Revolving Door prosecutions is limited and that there are no prosecutions on record for violations by former USTR, ITA, and USITC officials. Through its annual Conflict of Interest Prosecution Survey, OGE collects information from Justice on all indictments, pleas, convictions, etc., that deal with the conflict of interest laws. According to OGE's prosecution surveys, there have been 26 reported cases for Revolving Door prosecutions¹⁸ from 1990 through 2008. These cases included, for example, prosecutions of former officials who had violated their cooling off periods or life-time representation ban.¹⁹ None of these cases involved prosecutions of the section of the law that prohibits former senior officials from representing, aiding, or advising a foreign interest.

Justice officials cited several reasons for the limited number of prosecutions. First, they said that they receive a limited number of referrals from the investigative agencies. In particular, the Civil Division reported that the division had received no referrals of Revolving Door violations by USTR, ITA, and USITC officials in at least 15 years. Second, it is difficult to bring cases to a criminal level because Justice must show that the former employee knowingly broke the law. One Justice official noted that it is difficult to prove that the former employee knew he or she was violating the law and that it is often hard to prove that the employee's actions resulted in real harm. Moreover, it is possible that a former official misunderstood guidance received from his or her ethics official regarding post-employment restrictions, or that the former official did not receive accurate guidance. Justice officials said they viewed the Revolving Door law as being more useful as a preventative measure rather than a tool for prosecution; they believed that guidance from agency ethics officials deterred most violations. In many cases, according to a Justice official, the former employee can be counseled to stop doing what he or she is doing and that is all that needs to be done.

¹⁷ According to Justice officials, the responsible offices within Justice are the Public Integrity Section within the Criminal Division and the Fraud Section within the Commercial Litigation Branch of the Civil Division.

¹⁸ The survey counts 18 U.S.C. § 207 prosecutions as reported to OGE by Justice officials.

¹⁹ According to the survey, former employees have been prosecuted under sections 207 (a), 207(a)(1), 207(a)(2), 207(c), 207(c)(1), and 207 (e) of Title 18 of the U.S. Code from 1990 through 2008.

Foreign Agents Registration Act (FARA)

Key FARA Terms

- **“Foreign principal”**– (1) A government of a foreign country, (2) a foreign political party, (3) an individual outside the United States unless the person is a U.S. citizen domiciled in the United States, (4) a combination of individuals outside the United States, unless they are organized under or created by U.S. federal or state laws and have their principal place of business in the United States, and (5) any combination of persons organized under the laws of or having a principal place of business in a foreign country.
- **“Agent of a Foreign Principal”** – Any person who acts as an agent, representative, employee, or servant, or at the order, request, or under the direction or control of a foreign principal, or who is financed, supervised, controlled, or subsidized by a foreign principal, and who, within the United States: (1) engages in political activities in the interests of the foreign principal, (2) acts as public relations counsel, publicity agent, information-service employee, or political consultant for the foreign principal, (3) solicits, collect, disburses, or dispenses money or other things of value in the interest of the foreign principal, or (4) represents the interests of the foreign principal before any agency or official of the U.S. government.

FARA is a disclosure law that requires all individuals acting as agents of foreign principals to register their activities with Justice, unless exempt by law. FARA registration requirements are not specific to former federal employees, but rather apply to all individuals and organizations performing certain activities on behalf of a foreign principal, unless specifically exempt.²⁰ The purpose of the act is to ensure that the U.S. government and the American people are informed of the source of representational activity in the United States and the identity of persons attempting to influence U.S. public opinion, policy, and laws. Under FARA, a person is considered an agent of a foreign principal when the person acts in any capacity at the order or request or is under the control, supervision, or financing of the foreign principal, and engages in the following within the United States:

- political activities for or in the interest of the foreign principal;
- public relations, information-service employment, or political consulting for or in the interest of the foreign principal;
- fundraising, collecting, or disbursing of money or things of value for or in the interest of the foreign principal; or
- representing the interests of a foreign principal before any agency or official of the U.S. government.

Justice’s Registration Unit, in the National Security Division, is responsible for the administration of the law. FARA requires individuals engaged in the listed activities above to file a registration statement, which collects detailed information on the registrant and the activities he or she will perform on behalf of the foreign principal listed. Additionally, foreign agents are required to file a supplemental statement every 6 months for the duration of the foreign principal-agent relationship, providing updated information on the agent’s activities.

According to the Registration Unit, 5 of the 71 former senior officials who separated from USTR, ITA, and USITC from 2004 through 2009 registered

²⁰22 U.S.C. § 611 et seq.

as foreign agents²¹ at one point, but only one is currently registered. The other four individuals were FARA registrants for periods of time while working for private law firms either before their government service or in between 2 periods of government service. They are no longer registered. The individual who is currently registered was a former senior official at USTR and separated from the federal government in 2006. This individual first registered under FARA in 2008, more than 2 years after separating from the federal government, and, as of April 2010, remains actively registered. According to the individual's initial FARA registration in 2008, the individual is employed by a law firm and facilitates interaction between the U.S. government and the government of Mexico's agriculture department on meat inspection issues and Mexican meat imports.

Numerous FARA Exemptions

Individuals and organizations engaging in certain diplomatic, humanitarian, commercial, and legal activities on behalf of a foreign principal are exempt from registering with Justice. FARA regulations state that the burden of establishing the availability of the exemption is on the person for whose benefit the exemption is claimed;²² however, there is no requirement for such persons to provide any notification about their exempted activities and thus they are not formally tracked.

Diplomatic and consular officers of foreign governments, officials of foreign governments, and staff members of diplomatic and consular officers of foreign governments are exempt from registering under FARA. Diplomatic and consular officers must be accredited by the Department of State, and foreign officials and diplomatic and consular staff must file with the Department of State notifications of status with a foreign government.²³ Other exempted categories of agents of foreign principals include individuals who (1) engaged only in private and nonpolitical activities in furtherance of trade or commerce for the foreign principal; (2) engaged in collecting funds or contributions within the United States for humanitarian purposes such as medical aid, food, and clothing; and (3) engaged only in activities in furtherance of bona fide religious, scholastic,

²¹This number may not include all former senior official separated from USTR, ITA, and USITC between 2004 and 2009 who represented foreign principals because individuals engaged in exempted activities under FARA, such as diplomatic, commercial, and legal activities, and those registered under the Lobbying Disclosure Act, are not required to register.

²²28 C.F.R. § 5.300.

²³28 C.F.R. §§ 5.301-5.302.

academic, scientific, or artistic pursuits.²⁴ Activities are considered “private” for the commercial trade exemption, so long as they do not directly promote the public or political interests of the foreign government.²⁵ This applies even if the foreign principal is a corporation that is owned by the foreign government. The religious and scholastic pursuit exemption does not apply to any agent of a foreign principal who is engaged in political activity for the foreign principal.

Lawyers engaging in legal representation of foreign principals before an adjudicatory body in the United States are exempt from registering under FARA.²⁶ The legal exemption does not include attempts to influence officials other than in the course of judicial or law enforcement investigations or proceedings. Examples of activities for which lawyers still must register include attempts to influence the formulation, adoption, or change of domestic or foreign U.S. policy, or to persuade agency personnel or officials with reference to the political or public interests of a foreign country or foreign political party.²⁷

Agents of foreign principals who have registered as lobbyists under LDA are exempt from registering under FARA, if the LDA registration is connected with the agent’s representation of the foreign principal.²⁸ However, this exemption does not apply if the foreign principal is a foreign government or foreign political party.²⁹

Another exemption exists for agents whose foreign principal is a government of a foreign country, the defense of which the President deems vital to the defense of the United States.³⁰ This exemption is only available for people who are conducting activities that do not conflict with any domestic or foreign policies of the United States, who only disseminate accurate information within the United States and disclose their true identity in the disseminated information, and whose government

²⁴22 U.S.C. § 613(d)-(e).

²⁵28 C.F.R. § 5.304(b).

²⁶22 U.S.C. § 613(g).

²⁷28 C.F.R. § 5.306.

²⁸22 U.S.C. § 613(h).

²⁹28 C.F.R. § 5.307.

³⁰22 U.S.C. § 613(f).

FARA Compliance and Enforcement

has furnished information to the United States about the identity and activities of the agent of the foreign principal. This exemption does not become available until the President has published in the Federal Register the country whose defense is deemed vital to the defense of the United States.³¹

According to Justice officials, the cornerstone of the Registration Unit's enforcement efforts is encouraging voluntary compliance. This includes providing registration forms, copies of the FARA law, and other information to registrants, as well as members of the public and press. The Registration Unit proactively outreaches to various professional communities (e.g., law, advertising, political, and public relations firms) from which the majority of foreign agents are drawn, as well as educates prosecutors and other federal agencies about FARA. The Registration Unit meets with potential registrants to discuss their possible obligation to register, and with current registrants regarding whether they should continue to register. Justice has a public Web site that provides an overview of FARA and key information. In addition, Justice officials said they answer inquiries from agency ethics officers on FARA requirements and provide information on FARA registration and reporting requirements for federal employees to ethics officers.³²

Justice officials said that the Registration Unit is proactive in identifying potential registrants. It reviews publications such as Congressional Quarterly; monitors the Lobbying Disclosure Web site; and acts on tips provided from various sources. These referrals may come from sources such as the Department of State and the Federal Bureau of Investigation, or from competing legal firms or members of the public. The Registration Unit officials send out letters of inquiry to individuals it has reason to believe may be acting as foreign agents. The letters of inquiry start a process in which the Registration Unit requests more information on these individuals' activities to determine whether they need to register. In 2008, we reported that from January 2004 through May 2008, the Registration Unit had sent letters to approximately 130 individuals or firms it believed may have had an obligation to register as foreign agents under FARA, and received approximately 25 registrations as a result of these letters; the

³¹28 C.F.R. § 5.305.

³²However, ethics officials we spoke to at USTR, ITA, and USITC said that they did not typically counsel employees on FARA requirements since the requirement is not specific to government employees.

remaining entities were either determined not to have an obligation to register or were still being reviewed at the time of our 2008 report.³³ We requested updated information from Justice regarding inquiries sent from June 2008 through March 2010; Registration Unit officials reported that it had sent 18 letters of inquiry, and that two individuals were found to have obligations to register and have since registered. The remaining 16 were either found to have no obligation to register or the Registration Unit is continuing to evaluate whether a registration obligation exists.

Civil and criminal penalties exist for willful violations of FARA requirements and for willful false statements or omissions on FARA registration statements and supplements. Individuals who willfully violate FARA, or willfully make a false statement or omission on their registration form, can be imprisoned for up to 5 years or be fined up to \$10,000, or both. For certain violations, including the failure to properly label propaganda that is disseminated in the United States, the punishment is imprisonment for up to 6 months or a fine of up to \$5,000, or both. The Registration Unit handles enforcement of FARA violations. According to the Registration Unit, it has prosecuted one violation of FARA since 1990.

Lobbying Disclosure Act

The Lobbying Disclosure Act of 1995, as amended, requires public disclosure by registrants of certain lobbying activities. The LDA was enacted to enhance public awareness of paid lobbyists' efforts to influence the public decision-making process in the legislative and executive branches, and to increase public confidence in the integrity of government.³⁴ Under LDA, a registrant can be an individual, a lobbying firm, or an organization that has employees lobbying on its own behalf, depending on the circumstances. Registrants are required to file a registration with the Secretary of the Senate and the Clerk of the House of Representatives for each client on whose behalf a lobbying contact is

³³See GAO, *Post-Government Employment Restrictions and Foreign Agent Registration: Additional Action Needed to Enhance Implementation of Requirements*, [GAO-08-855](#) (Washington, D.C.: July 30, 2008).

³⁴2 U.S.C. § 1601.

Key LDA Terms

- **“Lobbyists”**— Individuals who are employed or retained by clients for compensation for services that include more than one lobbying contact. Individuals who spend less than twenty percent of their time for a client engaged in lobbying activities within a 3-month period do not meet the definition of lobbyist.
- **“Lobbying contact”**— Oral or written communications to covered executive or legislative branch officials on behalf of a client regarding (1) the formulation, modification, or adoption of federal legislation or federal rules, regulations or policies, (2) the administration or execution of federal programs or policies, or (3) the nomination and confirmation of a candidate for a position that requires Senate confirmation.
- **“Covered officials”**— Executive branch employees serving in positions on the Executive Schedule and other high-ranking executive branch officials, members of Congress and their employees, and certain other legislative branch employees.

made if a minimum dollar threshold is passed.³⁵ For reporting purposes, a lobbyist is defined as a person who has made two or more lobbying contacts and whose lobbying activities represent at least 20 percent of the time that he or she spends on behalf of the client during any quarter. Registrations and reports must also identify any covered official positions a lobbyist held in the previous 20 years.

Lobbyist registration requirements apply to all individuals conducting lobbying activities, not only to former federal officials. Within 45 days of first making a lobbying contact or being employed to make a lobbying contact with a covered official, whichever is earlier, the lobbyist or organization employing the lobbyist must register with the Secretary of the Senate and Clerk of the House of Representatives.³⁶

The Secretary and the Clerk are required by law to provide guidance and develop common standards and procedures for compliance with the LDA.³⁷ They must also review, verify, and inquire to ensure the timeliness and accuracy of the reports, as well as develop a publicly available list of all registered lobbyists and their clients. The Secretary and the Clerk must retain registrations and reports for 6 years after they are filed, and make all filed documents searchable on the Internet for free. If lobbyists are not in compliance with the LDA, the Secretary and Clerk must notify them in writing, after which the registrant has 60 days to provide an appropriate response. If the registrant does not reply, the Secretary and Clerk must refer the noncompliance to the U.S. Attorney for the District of Columbia.

According to the Clerk of the House of Representatives, 15 of the 71 former senior or very senior officials who separated from USTR, ITA, and

³⁵Federal law requires that a lobbying firm register if the firm’s total income from a client exceeds or is expected to exceed \$2,500 in a quarterly reporting period. An organization that employs internal lobbyists must register if the organization’s lobbying expenses exceed or are expected to exceed \$10,000 in a quarterly period. According to an official at the Clerk of the House of Representatives, these financial thresholds have increased due to consumer price index adjustments. Currently, a lobbying firm is exempt from registration for a particular client if its total income from that client for lobbying activities does not exceed and is not expected to exceed \$3,000 during a quarterly period. Organizations employing in-house lobbyists file a single registration, but are exempt from registration if their total expenses for lobbying activities do not exceed and are not expected to exceed \$11,500 during a quarterly period. 2 U.S.C. §1603(a).

³⁶2 U.S.C. § 1603.

³⁷2 U.S.C. § 1605.

USITC registered as lobbyists. Nine were former USTR officials, four were former ITA officials, and two were former USITC officials.

LDA exemptions

During a calendar quarter, lobbyists who do not spend at least 20 percent of their time conducting lobbying activities, or whose lobbying activities do not meet the above mentioned financial thresholds for either a particular client or for total expenses, are not required to register. In addition, communications made on behalf of a government of a foreign country or a foreign political party and disclosed under FARA are excluded from the definition of a “lobbying contact.”³⁸ Agents of foreign principals registered under FARA, whose only contacts are on behalf of foreign governments or political parties, therefore do not meet the definition of a lobbyist, because they would not have conducted any activities that meet the definition of “lobbying contact.” These individuals are therefore exempt from registering as lobbyists under the LDA for these activities.

LDA Compliance and Enforcement

The U.S. Attorney’s Office for the District of Columbia is responsible for the enforcement of the LDA. It fulfills its responsibilities, administratively, by researching and responding to referrals made from the Secretary of the Senate and the Clerk of the House of Representatives of non-complying lobbyists by sending additional noncompliance notices to the lobbyists, requesting that the lobbyists file reports or correct reported information. The U.S. Attorney’s Office has the authority to pursue a civil or criminal case for noncompliance. Civil penalties exist for instances in which lobbyists knowingly fail to remedy a defective filing within 60 days after notification from the Secretary or Clerk, and for any other knowing failure to comply with provisions of the LDA. If these violations occur, lobbyists can be subjected to fines up to \$200,000, depending on the gravity of the violation.³⁹ In addition, anyone who knowingly and corruptly fails to comply with the LDA requirements can be imprisoned for up to 5 years or fined, or both.

³⁸2 U.S.C. § 1602(8)(B)(iv).

³⁹2 U.S.C. § 1606(a).

In past work, we have reported in detail on the U.S. Attorney's Office's enforcement efforts.⁴⁰ To enforce LDA compliance, it has primarily focused on sending letters to lobbyists who have potentially violated the LDA by not filing disclosure reports as required. The letters request that the lobbyists comply with the law and promptly file the appropriate disclosure documents. In our 2008 lobbying disclosure report, we noted that the U.S. Attorney's Office had settled with three lobbyists and collected civil penalties totaling about \$47,000 in 2005. All of the settled cases involved a failure to file. Since then, no additional settlements or civil actions have been pursued, although the U.S. Attorney's Office is following up on hundreds of referrals each year. In a response to a GAO recommendation, the U.S. Attorney's Office developed a system to help monitor and track its enforcement efforts.

Agency Comments and Our Evaluation

We provided a draft of this report to USTR, ITA, USITC, Justice, and OGE and requested that they provide comments. We also provided a draft to staff at the Clerk of the House of Representatives and the Secretary of the Senate. We received comments from officials at all of these agencies, except ITA, to clarify our descriptions of the various laws, regulations, and agency practices. We considered their suggestions and made changes throughout the report in response, as appropriate.

We are sending copies of this report to the United States Trade Representative, the Secretary of Commerce, the Chairman of the U.S. International Trade Commission, the Director of the Office of Government Ethics, and the Attorney General, as well as appropriate congressional committees. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

⁴⁰The Honest Leadership and Open Government Act of 2007 mandated GAO to use a random sample to annually determine the extent to which lobbyists are able to provide support for information contained in their reports and registrations, provide recommendations related to improving compliance by lobbyists, and report on resources and authorities available to Justice for effective enforcement of the LDA. See GAO, *2009 Lobbying Disclosure: Observations on Lobbyists' Compliance with Disclosure Requirements*, [GAO-10-499](#) (Washington, D.C.: Apr. 1, 2010); *2008 Lobbying Disclosure: Observations on Lobbyists' Compliance with Disclosure Requirements*, [GAO-09-487](#) (Washington, D.C.: Apr. 1, 2009); and *Lobbying Disclosure: Observations on Lobbyists' Compliance with Disclosure Requirements*, [GAO-08-1099](#) (Washington, D.C.: Sept. 30, 2008).

If you or your staffs have any questions about this report, please contact me at (202) 512-4347 or yagerl@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "Loren Yager". The signature is written in a cursive, flowing style.

Loren Yager
Director, International Affairs and Trade

List of Requesters

The Honorable Louise M. Slaughter
Chairwoman
Committee on Rules
House of Representatives

The Honorable Dennis J. Kucinich
Chairman
Subcommittee on Domestic Policy
Committee on Oversight and Government Reform
House of Representatives

The Honorable Gene Green
House of Representatives

The Honorable Phil Hare
House of Representatives

The Honorable Marcy Kaptur
House of Representatives

The Honorable Michael H. Michaud
House of Representatives

The Honorable Tim Ryan
House of Representatives

The Honorable Betty Sutton
House of Representatives

Appendix I: Objectives, Scope, and Methodology

This report describes a summary and comparison of the relevant federal statutes governing post-employment, foreign representation, and lobbying activities. This information includes data on the number of senior officials who separated from the Office of the United States Trade Representative (USTR), the Department of Commerce's International Trade Administration (ITA), and the United States International Trade Commission (USITC) from 2004 through 2009, as well as information on the number of these officials who registered under FARA or LDA.

To address this objective, we reviewed the post-employment restrictions of 18 U.S.C. § 207, referred to as the "Revolving Door" law in this report, the Foreign Agents Registration Act (FARA), and the Lobbying Disclosure Act (LDA), as amended. We interviewed officials from the Office of Government Ethics (OGE) regarding the interpretation and implementation of the Revolving Door law. We interviewed ethics officials from USTR, ITA, and USITC regarding these laws and the guidance these officials provide to current, separating, and former employees of their respective agencies. We included USTR and ITA in our scope because their respective missions concern trade policy formulation and trade promotion. We included the USITC because of its role in administering U.S. trade remedy laws and providing independent analysis on trade matters. We interviewed Department of Justice (Justice) officials regarding administration of FARA and enforcement actions for post-employment restrictions and FARA.

We focused our work specifically on the number of former senior and very senior officials separated from these agencies because post-employment restrictions are more stringent for former senior and very senior officials. We obtained data on the number of former senior officials who separated from USTR, ITA, and USITC from 2004 through 2009 from each of the respective agencies and cross-referenced these data with data we extracted from the Office of Personnel Management's Central Personnel Data File. We defined "senior" as being any official who met the definition of "senior employee" in the post-employment restrictions on former federal employees:¹

- Employees whose rate of pay was specified in or fixed according to the Executive Schedule.

¹18 U.S.C. § 207(c).

- For employees whose rate of pay was not tied to the Executive Schedule, any employee whose rate of basic pay was at 86.5 percent or higher of the rate of basic pay for Level II of the Executive Schedule.
- For the period between November 24, 2003, to November 24, 2005: employees who, as of November 23, 2003, were in a position for which the rate of basic pay was equal or greater than the rate of basic pay payable for Level 5 of the Senior Executive Service in 2003.²

We collected data on all senior officials separated from these three agencies, regardless of job title or description. We did not include officials who had separated from one of the agencies but who had continued working for the federal government at another agency. For contextual purposes, we queried the Central Personnel Data File to ascertain the number of all staff who separated from USTR, ITA, and USITC from 2004 through 2009 and left government service. To assess the reliability of data on senior officials who separated from USTR, ITA, and USITC, we used data from the Central Personnel Data File to determine the reliability of the agency-supplied data. After reconciling discrepancies with the agencies and receiving revised data from them, we determined that the data provided to us from the agencies were sufficiently reliable.

Using the names of the 71 former senior officials we had identified as having separated from USTR, ITA, and USITC between 2004 and 2009, we requested Justice's Registration Unit to determine which of these individuals had registered under FARA. As our work focused only on senior level employees, we did not ask the Registration Unit to search for FARA registrations for all former employees from these three agencies. We did not attempt to determine whether any of these 71 former senior officials who did not register should have registered under FARA.

Using this same list of 71 former senior officials, we requested the Clerk of the House of Representatives to conduct a search of the publicly-available LDA database maintained by the Clerk to ascertain the number of these individuals who had registered as lobbyists. As our work was focused only on senior employees, we did not search the LDA databases for all former employees from these three agencies. We did not attempt to determine

²In 2003, the rate of basic pay payable for Level 5 of the Senior Executive Service was \$134,000.

whether any of these 71 former senior officials who did not register should have registered under LDA.

To assess the reliability of the FARA and LDA registration data, we reviewed documentation related to the data sources and interviewed knowledgeable agency officials about the data. Although both FARA and LDA are publicly-available databases, we requested that officials at Justice's Registration Unit search the FARA database and that officials at the Clerk of the House of Representatives search the LDA database as those officials are knowledgeable about search terms for their databases. These officials described to us the structure of their databases and the methods used for searching. We determined that the data were sufficiently reliable for the purpose of our report.

We conducted our work from January 2010 to June 2010 in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objective. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data obtained, and the analysis conducted, provide a reasonable basis for the findings in this product.

Appendix II: Overview of Revolving Door Law and Regulations

OGE has promulgated regulations that clarify many of the terms in the Revolving Door law and that provide examples of what constitutes prohibited behavior by a former federal employee, as discussed below:

- **18 U.S.C. § 207(a)(1) Permanent restrictions on representations in particular matters for all officers and employees of the executive branch.** This section of the law prohibits any former employee of the executive branch from knowingly, with the intent to influence, making a communication to or appearance before a federal employee on behalf of another person in connection with a particular matter involving a specific party, in which he or she participated personally and substantially as an employee, and in which the United States is a party or has a direct and substantial interest.

For the life-time ban under this section of the law, federal regulations state that “communications” occur when information of any kind is transmitted by any means, as long as the employee intends the information to be attributed to himself or herself. “Appearances” occur when the former employee is physically present before an employee of the federal government in either a formal or informal setting. This section does not prohibit any behind-the-scenes assistance from former federal employees, so long as no communications or appearances occur.¹ For example, if a former employee of an agency accompanies representatives of a grantee of that agency to an agency meeting, the former employee is considered to be making an appearance, even if he or she never speaks during the meeting.

Communications and appearances are only prohibited if they are made knowingly and with the intent to influence the United States government. Federal regulations clarify that this occurs when the former employee’s purpose is to: (1) seek a government ruling, benefit, approval, or other discretionary government action, or (2) affect government action in connection with an issue or aspect of a matter which involves actual or potential controversy. For example, a former employee who calls an agency official to complain about how that agency is auditing the employee’s current employer has made a communication with the intent to influence government action.² Certain communications and appearances are not considered to be made with the intent to influence, including routine requests not involving controversy, factual statements or inquiries

¹5 C.F.R. § 2641.201(d).

²5 C.F.R. § 2641.201(e).

that are not in dispute or do not seek discretionary government action, and purely social contacts. For example, a former employee who calls his or her prior agency to ask for the date of a scheduled hearing for her current client is not intending to influence the government. However, if he or she calls his or her former agency to request that the hearing date be moved, that may be considered a communication made with the intent to influence.

The prohibition in this section of the law applies only to communications or appearances made in connection with particular matters involving specific parties. According to federal regulations, “particular matters involving specific parties” include those that involve specific proceedings that affect the legal rights of parties, or an isolatable transaction between identified parties, such as specific contracts, grants, licenses, product approval applications, enforcement actions, administrative adjudications, or court cases.³ “Particular matters involving specific parties” do not include matters of general applicability, such as rulemaking or the formulation of general policies. The regulations state that international agreements may sometimes be considered particular matters involving specific parties, depending in part on whether the agreement focuses on specific property or claims, or instead includes a large number of diverse issues. For example, the regulations state that a former employee of the Department of State who participated in a treaty negotiation concerning transfer of ownership of a piece of land may not later represent the foreign government in the final stages of that negotiation without violating this provision.

The prohibition in this section of the law only applies to employees who participate “personally and substantially” in the matter. Federal regulations state that this means the employee participated directly or through direct and active supervision, and that the employee’s involvement was of significance to the matter.⁴ Substantial participation requires more than official responsibility or involvement on an administrative or peripheral issue.

- **207(a)(2) Two-year restrictions on all former executive branch employees for particular matters under official responsibility.** A 2-year prohibition, similar to the life-time prohibition that exists under

³5 C.F.R. § 2641.201(h).

⁴5 C.F.R. § 2641.201(i).

section 207(a)(1) for all former federal employees, exists under section 207(a)(2). However, whereas section 207(a)(1) requires personal and substantial participation in a matter on the part of the former employee, section 207(a)(2) merely requires that the employee had “official responsibility” for the particular matter. According to OGE regulations, “official responsibility” means direct administrative or operating authority to approve, disapprove, or otherwise direct government action.⁵

- **207(b)(1) One-year restrictions on aiding or advertising concerning treaty negotiations.** All former federal employees who participated personally and substantially in an ongoing treaty negotiation are prohibited for 1 year from aiding or advising any other person in that treaty negotiation, if the employee had access to certain covered information. According to OGE regulations, “covered information” means agency records that the employee had access to and that were designated exempt from disclosure under the Freedom of Information Act.⁶ The same prohibition used to exist for employees who negotiated certain trade agreements; however, the specific definition of “trade agreement,” as used in section 207(b)(2)(A), refers only to the fast track trade agreement authority,⁷ which expired in 1993. According to OGE, when Congress restored similar fast track authority in 2002, it did so by creating new provisions⁸ rather than by amending the prior fast track law that is referenced in section 207(b) and made no conforming changes to section 207(b) to reference the new fast track provisions. Consequently, section 207(b) no longer covers any existing trade agreement authorities.
- **207(c) One-year restrictions on former senior officials concerning any matter.** For 1 year following termination of service in a senior position, former senior employees may not knowingly, with the intent to influence, make communications to or appearances before their former agency, if it is made on behalf of another person in connection with a matter on which the former employee seeks official action by the agency. “Senior employees” include employees whose rate of pay is specified in or fixed according to Level II of the Executive Schedule, as well as certain other employees who meet a specific financial threshold or hold specific

⁵5 C.F.R. § 2641.202.

⁶See 5 C.F.R. § 2641.203.

⁷See section 1102 of the Omnibus Trade and Competitiveness Act of 1988 (codified at 19 U.S.C. § 2902).

⁸See 19 U.S.C. § 3803.

appointed positions.⁹ Federal regulations state that a senior employee seeks official action when he attempts to induce a current employee to make a decision by his communication or appearance.¹⁰ Additionally, “matter” is not limited to just “particular matters” for this section, but also includes the consideration of broad policy options, new matters that were not previously pending at the employee’s former agency, and matters pending before any other agency or the legislative or judicial branches of government.

- **207(d) Two-year restriction on former very senior employees’ representations concerning any matter.** A similar prohibition that applies to former senior federal employees also applies to former very senior federal employees, except that the prohibition lasts for two years, and also applies to representational contacts with Executive Schedule officials in the federal government and the President and Vice President. “Very senior employees” include employees whose rate of pay is equal to the rate of pay for Level I of the Executive Schedule, and employees in certain other named and appointed positions.¹¹
- **207(e) Two-year restriction on former Senators and 1-year restriction on former members of the House of Representatives and congressional staff.** For 2 years for Senators, and for 1 year for members of the House of Representatives and congressional staff, former members of Congress and employees are prohibited from contacting current members of Congress and congressional staff with the intent to influence any matter on which the former member or staffer seeks action.
- **207(f) One-year restriction on former senior and very senior employees’ representations on behalf of, or aid or advice to, a foreign entity.** For 1 year after leaving a senior or very senior position, employees cannot knowingly represent a foreign government or foreign political party before the United States government, or aid or advise the foreign entity with the intent to influence decisions of U.S. government officials. A life-time ban on representing, aiding, or advising foreign entities in this capacity applies to the United States Trade Representative and the Deputy United States Trade Representatives.

⁹5 C.F.R. § 2641.104.

¹⁰5 C.F.R. § 2641.204(i).

¹¹5 C.F.R. § 2641.104.

Section 207(f) states that “foreign entity” means both “foreign government” and “foreign political party” as defined in FARA. Under FARA, foreign governments include any person or groups of persons exercising actual or legal political jurisdiction over any foreign country or portion thereof, including factions and insurgents that may exercise governmental authority but have not been recognized by the United States.¹² Foreign political parties include organizations outside the United States that are engaged in activities devoted to establishing, controlling, or acquiring control of foreign governments, or that are furthering or influencing political or public interests, policies or relations of a foreign government.¹³

However, it is sometimes difficult to discern whether certain foreign organizations meet the definition of “foreign entity” under 207(f). Justice’s Office of Legal Counsel issued a legal opinion in 2008 stating that a foreign corporation can be considered a foreign entity for purposes of 207(f) if it exercises sovereign authority in fact or by formal delegation. In this opinion, Justice clarified that ownership of a foreign corporation by the foreign government does not itself make the corporation a foreign entity, but that if the corporation “exercises political jurisdiction over part of a foreign country,” then it would be considered a foreign entity under 207(f) and the prohibition would apply.

¹²22 U.S.C. § 611(e).

¹³22 U.S.C. § 611(f).

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Loren Yager (202) 512-4347 or yagerl@gao.gov.

Staff Acknowledgments

In addition to the individual named above, Adam Cowles (Assistant Director), Kate Brentzel, Ashley Alley, Greg Wilmoth, and Karen Deans made key contributions to this report.

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