

**OFFICE OF GOVERNMENT ETHICS**

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**Memorandum to Designated Agency Ethics Officials  
dated May 27, 2004**

Attached is a statement that I delivered on May 18, 2004, before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce. The statement contains a discussion of the Office of Government Ethics (OGE) awards rule, 5 C.F.R. § 2635.204(d), as well as a discussion of various rules governing outside consulting activities. I am providing you with a copy of this statement because it sets out guidance on the subjects of awards and consulting that may be useful to ethics officials generally.

With respect to awards, the attached statement provides specific guidance on two issues. First, the statement addresses what constitutes an impermissible source for an award for meritorious public service or achievement. The specific question addressed is whether and under what circumstances the head of an agency or large agency component may accept an award from a source doing any business anywhere in that agency or office. In this connection, the statement does not provide a bright line test, but rather provides a list of factors for agency officials to consider in determining whether it is reasonable to assume that the office head may become involved in matters substantially affecting the interests of the particular source. Second, the statement addresses the subject of "lecture awards" and the distinction between a true award and a speaker's fee. As noted in the statement, this is an important distinction because the acceptance of bona fide awards is subject to different standards than the receipt of compensation or earned income for speaking activities. The statement sets out several criteria to assist agency officials in determining whether the primary purpose of the payment is to honor the employee for meritorious public service or achievement, or to compensate the employee for services as a speaker.

With respect to outside activities, the statement discusses the criteria that agencies should use in determining whether a proposed consulting arrangement is consistent with ethical requirements. In addition to the requirements in 5 C.F.R. § 2635.802(a), sections 2635.801(c) and 2635.802(b) require agencies to determine whether a proposed outside activity is consistent with other provisions in the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), including the prohibition in 5 C.F.R. § 2635.702 against

using public office for private gain. The statement sets out certain considerations that ethics officials should take into account when assessing outside consulting arrangements for potential appearances of using public office for private gain. We note that there is no specific rule on consulting in the Standards of Conduct, although example 2 following section 2635.802 provides some guidance on consulting activities that involve the use of public office for private gain. See also 57 *Federal Register* 35006, 35040 (August 7, 1992) (many of same considerations applicable to teaching, speaking and writing apply to consulting activities). However, OGE is looking at the Governmentwide rules on outside activities to determine whether any changes are needed.

Finally, in light of certain reports in the media concerning other statements made at the recent House hearing, we want to take this opportunity to address the question of an ethics official's duty to handle so-called "appearance" questions. Accounts of certain statements made at the hearing have suggested that there is a distinction between "law" and Government "ethics," or between the provision of strictly legal advice and the provision of advice about appearances. What OGE fears may become lost in this discussion is the fundamental fact that Federal ethics regulations actually make appearance considerations part of the "law" and, therefore, the responsibility of every Federal employee and agency ethics official. See 5 C.F.R. § 2635.101(b)(14).

[Attachment](#)