

Office of Government Ethics

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**Memorandum dated February 28, 1996,
from Stephen D. Potts, Director,
to Designated Agency Ethics Officials,
General Counsels, and Inspectors General
Regarding Honoraria**

On February 26, 1996, the Office of Legal Counsel (OLC) at the Department of Justice issued an opinion concerning the decision of the United States Supreme Court in *National Treasury Employees Union v. United States*, 513 U.S. 454 (1995) (NTEU). In NTEU, the Court found that the honoraria ban at 5 U.S.C. app., § 501(b) violated the First Amendment rights of persons on whose behalf the case was brought. During the course of the litigation, the parties stipulated that the case was being brought on behalf of persons "below grade GS-16." In its opinion, OLC concluded that the Supreme Court's ruling "effectively eviscerated" the honoraria prohibition and that no remaining applications of the statute exist. In accordance with OLC's interpretation, the Department of Justice has determined that the honoraria prohibition cannot be enforced against any Government employee, including employees of the legislative and judicial branches and high-level executive branch officials.

Consequently, you may advise employees that they may now receive honoraria held in escrow accounts established in accordance with the guidelines described in our DAEOgram of June 24, 1991 [OGE Informal Advisory Memorandum 91 x 19]. We also recommend that you remind employees that they remain subject to other statutory and regulatory provisions that restrict their ability to accept honoraria under certain circumstances. These restrictions include the prohibition at 5 C.F.R. § 2635.807 on receiving compensation for teaching, speaking and writing that relates to an employee's official duties; the limitations on outside earned income described in 5 U.S.C. app., § 501, as implemented in 5 C.F.R. § 2636.301 et seq., for certain noncareer officers and employees; and the bar, in Executive Order 12674, on any outside earned income for certain Presidential appointees. A summary of these restrictions can be found in our DAEOgram of March 3, 1995 (DO-95-011).