

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



Preventing Conflicts of Interest
in the Executive Branch

Teaching, Speaking, or Writing:
Related to Official Duties?

When Does 2635.807 Apply?



- When can employees get paid to write in their personal capacity?
- .807 does not prohibit any writing at all – it only restricts writing:
 - If compensated;
 - Written while an employee; and
 - Related to official duties.

History of Prohibition



- EO 11222, May 8, 1965
 - § 202
- 5 C.F.R. § 735.203(c), September 4, 1968
 - All Employees: Prohibited compensated and uncompensated writing that “depend[ed] on” nonpublic information
 - Senior Officials: Prohibited compensation if the subject matter of the writing was devoted substantially to the responsibilities, programs, or operations of the employee’s agency or drew substantially on nonpublic information

History Continued



- 2 Op. O.L.C. 361 (1977)- The legality and propriety of writing articles and books for publication
 - Where nonpublic information was absent, the prohibition in § 202 depended on what the interpretation of “devoted substantially” meant
- OGE Advisory 85x18- Sets forth the pre-.807 framework for analyzing outside compensated speaking situations

Purpose of 2635.807



- Ensuring that public office is not used for private gain [Preamble to final]
- Employees shall endeavor to avoid actions creating even the appearance of using public office for private gain [Preamble to final]

Template for 2635.807 Analysis



- Six questions to address: DO-08-006
- Today: Related to Official Duties Only
 - SGEs – Least restrictive
 - Regular Employees – Less restrictive
 - CNC Employees – Most restrictive

Related To Official Duties



What is the Speaking or Writing About?

- Part of official duties;
- Draws substantially on nonpublic information;
- Deals in significant part with:
 - Matters to which the employee has been assigned within 1 year;
 - Ongoing or announced policy, program, or operation of agency;
 - General subject matter area or economic sector.

Related To Official Duties



Who Offered to Pay & Why?

- Invitation from person affected by the performance of the employee's duties
- Invitation because of official position

SGEs Serving less than 60 days: Least Restrictive



Definition of “Related to”

- Invitation from person affected by performance of employee's duties
- Invitation because of official position
- Part of official duties
- Draws substantially on nonpublic information
- Deals in significant part with:
 - Party matters to which the employee has been assigned within 1 year

Relationship of Restrictions



SGEs x<60 days

- Invitation from “Bad Prohibited Source”
- Invitation because of official position
- Part of Official Duties
- Draws on nonpublic information
- Deals in significant part—party matters assigned w/in 1 year

Serving More than 60 days: (most) Least Restrictive



Definition of “Related to”

- Designated significant part with:
 - matters to which the employee has been assigned within 1 year

Relationship of Restrictions



SGEs x>60 days

Deals in significant part with party matters to which the employee has been assigned within 1 year

SGEs x<60 days

- Invitation from “Bad Prohibited Source”
- Invitation because of official position
- Part of Official Duties
- Draws on nonpublic information
- Deals in significant part—party matters assigned w/in 1 year

Regular Employees



Definition of “Related to”

- Deals in significant part with:
 - Ongoing or announced policy, program, or operation of the agency;

Relationship of Restrictions



Regular Employees

Deals in significant part with ongoing or announced policy, program, or operation of agency

SGEs x>60 days

Deals in significant part with party matters to which the employee has been assigned within 1 year

SGEs x<60 days

- Invitation from “Bad Prohibited Source”
- Invitation because of official position
- Part of Official Duties
- Draws on nonpublic information
- Deals in significant part—party matters assigned w/in 1 year

Deals in significant part with an ongoing or announced policy, program, or operation of the agency



- For regular employees look to 2635.807(a)(2)(i) (Examples 3 - 6)
- For SGEs “related to official duties” look to 2635.807(a)(2)(i) (Examples 7 & 8)
- For a discussion and further analysis look to OGE Informal Advisory Opinion 01x10 (November 13, 2001); Wolfe v. Barnhart, 446 F.3d 1096 (10th Cir. 2006)

Covered Noncareer Employees



Definition of “Related to”

- Deals in significant part with:
 - The general subject matter area, industry, or economic sector primarily affected by the programs and operations of the agency

Relationship of Restrictions



Covered Noncareer Employees

Deals in significant part with the general subject matter area, industry, or economic sector primarily affected by the programs and operations of the agency

Regular Employees

Deals in significant part with ongoing or announced policy, program, or operation of the agency

SGEs x>60 days

Deals in significant part with ~~party~~ matters to which the employee has been assigned within 1 year

SGEs x<60 days

- Invitation from “Bad Prohibited Source”
- Invitation because of official position
- Part of Official Duties
- Draws on nonpublic information
- Deals in significant part—party matters assigned w/in 1 year

Any Questions? Contact:



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