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Letter to a Designated Agency Ethics Official dated March 19, 2010,
Regarding Uncompensated Teaching, Writing, and Speaking

This is in reference to a series of discussions between the United States Office of Government Ethics (OGE) and [the] Alternate DAEO for [your agency] regarding the application of the Standards of Conduct to uncompensated teaching, writing, and speaking by [your agency's] employees in their personal capacity. The purpose of this letter is to clarify OGE's views on the application of several provisions of the Standards of Conduct that pertain to uncompensated teaching, writing, and speaking.

The foundation in the Standards underlying the limitations on use of official title is 5 CFR 2635.702(b), which provides "an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the government sanctions or endorses his personal activities or those of another." More specific guidance on writing and speaking is found at 5 CFR 2635.807(b). Section 807(b)(1) provides that an employee "may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him . . . provided his title is given no more prominence than other significant biographical details".

There are two important aspects of this provision. The first is that the employee's position is merely one of several biographical details provided by the employee. Determining compliance with this standard is straightforward; either the employee has provided relevant biographical details other than his official title and position, or he has not. If an employee provides only his official position and title in connection with uncompensated writing, teaching or speaking, the underlying principle of subsection 702(b), implying agency sanction or endorsement, would be offended. The second aspect of section 807(b)(1) that warrants discussion is the phrase, "provided that his title is given no more prominence than other significant biographical details." In evaluating whether an employee has complied in good faith with this provision, the focus must be on those matters that are within the employee's control. In other words, an employee should not be held accountable for changes made by an editor or someone else outside the employee's control whose revisions result in undue prominence being given to the employee's title or official position.

Section 807(b)(2), which pertains to publishing in scientific or professional journals, permits an employee publishing in his personal capacity to use his title or official position if he also includes a disclaimer clarifying that the views expressed "do not necessarily represent those of his agency or the United States." Because the mission of many Executive Branch agencies focuses on research, and the Government publishes its own scientific, medical, and professional

reports, it is especially important that readers of these journals are clear as to whether findings and conclusions are those of the Government or those of an employee writing in his personal capacity. The requirement in section 807(b)(2) for a disclaimer is an additional safeguard against such confusion.. The fact that a disclaimer is mentioned in only section 807(b)(2) does not mean that a disclaimer could not or should not be used in connection with other personal publishing, teaching or speaking engagements. When editors remove additional biographical details supplied by an employee due to space limitations, an appropriate disclaimer in a newspaper op-ed may be a very effective measure to resolve any ambiguity as to the expression of personal versus official views.

In summary, section 807 is subject to two bright lines. With regard to section 807(b)(1), an employee teaching, speaking, or writing in his personal capacity may include his official position and title only as one of several pertinent biographical details. In drafting this section of the Standards, OGE did not establish any criteria for how many additional biographical details are sufficient; nor does OGE believe a formulaic approach to this provision is appropriate. An employee who provides several pertinent biographical details should not be regarded as violating section 807(b)(1) if, in the editorial process, persons beyond the employee's control and without the employee's consent, omit details other than the employee's position and title. Because of that possibility, employees may wish to include an appropriate disclaimer as a matter of prudence. With regard to publishing in a personal capacity in a scientific and professional journal, any reference to the employee's position or title must also be accompanied by a disclaimer that the views expressed do not necessarily reflect those of the agency or the United States. Recognizing that an employee may not have the final word as to what is ultimately published in either journals or the more popular press, it is essential to evaluate the totality of the circumstances in view of the overarching purposes of section 702(b) and with appropriate deference to the First Amendment and protected whistle blower activities.

The purpose of section 807(b)(1) and (b)(2), in conjunction with section 702(b), is to ensure that public is not misled as to whether the views expressed by an Executive Branch employee in uncompensated teaching, writing, or speaking are those of the employee or those of the Government. A too literal parsing of either 807(b)(1) or (b)(2) divorced from this broader purpose could lead to unnecessarily restricting employee's rights of free speech and commentary. OGE believes that when it is clear from the actual language or context of an employee's teaching, writing, or speaking that the employee is representing personal rather than agency views, then purpose of the specific provisions discussed above has been met.

I hope you will find these views helpful. Please do not hesitate to contact me if OGE may be of further assistance.

Sincerely,

Don W. Fox
General Counsel