

**Office of Government Ethics**  
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**Memorandum issued October 28, 1985**  
**from David H. Martin, Director**  
**to Designated Agency Ethics Officials,**  
**General Counsels and Inspectors General**  
**Regarding Participating in Privately-Sponsored**  
**Seminars or Conferences for Compensation**

Private organizations frequently invite Federal officials to be the principal speakers at conferences or seminars on subjects related to the activities of their employing agencies so that participants may learn details of the agency's policies or activities. Examples of these activities include private briefings given by Government officials to investor groups, and seminars sponsored by organizations, such as law book publishers, at which the primary speakers are Federal employees.

Public officials have a responsibility to increase public understanding of the programs for which they are responsible. However, an official should be wary of participating in a conference if his or her presence is desired primarily because it will contribute to the conference's financial success. Furthermore, problems arise when the subject matter of the discussion is devoted substantially to the responsibilities, programs, or operations of the agency, or draws substantially on official data or ideas which have not become part of the body of public information.

Title IV of the Ethics in Government Act gives the Office of Government Ethics responsibility for overall direction of executive branch policies related to preventing conflicts of interest. Because executive branch agencies differ significantly in their responses to their employees' requests to participate in conferences, seminars, or private briefings, we have prepared this memorandum to outline the factors to consider in determining whether the employee may receive compensation for his or her participation therein.

**General Principles**

Because situations such as private briefings to investor groups and outside seminars and conferences are fraught with standards of conduct concerns, agencies must carefully evaluate such activities, using the analysis contained in this memorandum, before approving an employee's participation therein. This memorandum contains a brief summary of the ethical principles associated with such activities, followed by an

in-depth analysis of those principles.

1. Section 209 of 18 U.S.C. prohibits a Government employee, with limited exceptions, from accepting an honorarium or other supplementation of salary from a private source for speeches given or articles written in the course of the employee's official duties.

2. Section 735.206 of 5 C.F.R. prohibits any Government employee from receiving an honorarium or any other thing of monetary value for a lecture or article containing nonpublic Government information.

3. Section 735.203(c) of 5 C.F.R. prohibits certain high-level officials listed in section 401(a) of Executive Order 11222 from receiving compensation for a lecture or article, the subject matter of which relates in any way to the area in which their agencies work.

4. Lower-level employees are prohibited from receiving compensation for lectures or articles when the activity focuses specifically on the employing agency's responsibilities, policies, and programs, when the employee may be perceived as conveying the agency's policies, or when the activity interferes with his or her official duties.

5. Section 735.201a(a) of 5 C.F.R. prohibits an employee from receiving compensation for participating in a privately-sponsored seminar or conference when it appears that the entity requesting the employee's presence did so because of the individual's title and position in the agency in order to attract participants to the program.

6. Section 735.202(a) of 5 C.F.R. prohibits a Federal employee from receiving anything of monetary value for a lecture or an article from an entity that has, or is seeking, a business relationship with the employee's agency.

7. Agencies should prohibit their employees from receiving anything of monetary value for lectures or articles when acceptance thereof would create appearance problems under section 735.201a(a), or would otherwise violate the standards of conduct or conflict of interest statutes.

## **Discussion**

Section 209 of 18 U.S.C. prohibits all Government employees from receiving compensation from any source other than the Federal Government for their official duties. In the context of lecturing and writing, section 209 prohibits a Government employee, with limited exceptions, from

accepting an honorarium or other compensation from an outside source for speeches given or articles written in the course of the employee's official duties. In light of that provision, a Government employee participating officially in a conference or seminar sponsored by a private entity may not receive an honorarium or other supplementation of salary from the sponsoring entity.

With respect to lecturing and writing as an outside activity, section 202 of Executive Order 11222 establishes the framework for executive branch policy in this area as follows:

An employee shall not engage in any outside employment, including teaching, lecturing, or writing, which might result in a conflict, or an apparent conflict, between the private interests of the employee and his official government duties and responsibilities, although such teaching, lecturing, and writing by employees are generally to be encouraged so long as the laws, the provisions of this order, and Civil Service Commission and agency regulations covering conflict of interest and outside employment are observed.

Although the Executive Order encourages employees to engage in teaching, lecturing, and writing, it does so with limitations. The employee may not receive compensation when the activity might result in an actual or apparent conflict of interest, or when it runs afoul of another law, the Executive Order, or the agency's regulations. To determine the extent of this limitation, we must consider the following laws and regulations that have an impact in this area.

### **Certain High-Level Officials -- 5 C.F.R. § 735.203**

The most explicit reference to lecturing and writing by Government employees outside their Government employment appears in subsection (c) of 5 C.F.R. § 735.203. Subsection (c) reflects the language of the Executive Order, encouraging employees "to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive Order, this part, or the agency regulations." However, the regulation imposes specific restrictions on Presidential appointees covered by section 401(a) of the Executive Order. This narrow category of individuals consists of heads of agencies, Presidential appointees in the Executive Office of the President

who are not subordinate to the head of an agency in that office, and full-time members of committees, boards, or commissions appointed by the President.<sup>1</sup> The regulation addresses two situations in which these employees may not receive compensation for lecturing or writing outside their official duties where the subject matter of the activity is closely related to their Government work. Those employees may not receive compensation for "any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of [their agencies], or which draws substantially on official data or ideas which have not become part of the body of public information."

If nonpublic information is involved in the employee's lecture, employees covered by this provision and all other Federal employees, as discussed below, may not receive compensation from the sponsoring organization. When the employee's lecture or article does not contain nonpublic information, the scope of the prohibition in section 735.203(c) on this category of top-level employees depends upon the meaning of the phrase "devoted substantially to the responsibilities, programs, or operations of his agency." In an opinion about Government officials writing articles and books, the Office of Legal Counsel explains that the Department of Justice has given the phrase a broad reading as it applies to top-level employees. It encompasses "the general subject matter or sector of the economy or society with which the individual's agency is concerned, even though the writing does not specifically relate to the functions of the agency."<sup>2</sup> The Office of Legal Counsel rejected a narrower interpretation of the phrase with respect to these employees, which would have barred the receipt of compensation only where the article or book related to existing statutory responsibilities and programs of the agency.<sup>3</sup> Although the Office of Legal Counsel was interpreting the Department of Justice's own regulations, we agree with this broad interpretation as it relates to the activities of the senior officials listed in section 401(a) of the Executive Order. For example, an FTC commissioner would not be permitted to accept anything of monetary value for a speech or an article on the procedure for instituting an action before the FTC, or for a speech or article on the more general topic of Federal trade law. That would be impermissible because the general subject matter is that with which the individual's agency is concerned. As a result, the employees encompassed by this prohibition may not receive compensation or anything of monetary value for teaching or lecturing at seminars, conferences, or private briefings where the subject matter relates to the area in which their agencies work.

### **All Other Employees -- Guidelines**

Since the restriction of 5 C.F.R. § 735.203(c) only addresses a narrow group of senior officials, agencies have had little guidance on how to handle situations in which lower-level employees seek to engage in lecturing and writing on subjects related to their work. This memorandum will discuss the factors agencies should consider in evaluating their employees' requests to participate in these conferences or seminars for compensation.<sup>4</sup>

Section 201(c)(1) of Executive Order 11222 prohibits an employee from taking any action, whether or not otherwise specifically prohibited, which might result in, or create the appearance of, using public office for private gain. In light of that provision, which is mirrored in the model regulations at 5 C.F.R. § 735.201a(a), the employee must be concerned with appearances even where the employee's speaking or writing is not prohibited by a more specific regulation. In cases in which an employee not specifically covered by subsection (c) is engaged in writing or speaking on matters substantially related to the activities of his or her agency, the interest in avoiding the appearance of using public office for private gain may preclude the employee from receiving outside compensation for the activity.

Section 735.206 of 5 C.F.R. prohibits an employee from directly or indirectly using, or allowing the use of, official nonpublic information to further a private interest. This regulation, applicable to all Federal employees, prohibits an employee from receiving an honorarium or any other thing of monetary value for a lecture which contains Government information not previously disclosed to the public. Although there are circumstances under which an employee could appropriately release previously nonpublic information in an official speech or paper, he or she should not do so in a private forum where the primary purpose is to benefit a private interest rather than to release agency views in an acceptable forum.

While section 735.206 addresses the situation in which the employee's own private interest is satisfied by some form of compensation, the private interest covered by the regulation need not be restricted to that of the employee. An opinion from the Office of Legal Counsel has interpreted the Justice Department's regulation in this area to apply "even where the private gain will be realized by a person or organization other than the Government official."<sup>5</sup> This Office believes that comparable regulations of other agencies should be construed in the same manner.

When the seminar, conference, or briefing in which the employee wishes to participate does not involve nonpublic information, but the subject matter thereof relates to the programs or operations of the employee's agency, the permissibility of the activity depends upon how closely the subject matter relates to the agency's responsibilities. Generally, an employee not covered by 5 C.F.R. § 735.203(c) may lecture on a subject within the employee's inherent expertise based on his or her educational background or experience, even though the subject matter is related to the activities of the employing agency. The employee will be prohibited from receiving compensation only when the activity focuses specifically on the agency's responsibilities, policies, and programs, when the employee may be perceived as conveying the agency's policies, or when the activity interferes with his or her official duties. This formulation reflects the approach taken by the Office of Legal Counsel in an opinion on the outside employment of Government employees.<sup>6</sup>

The purpose of this distinction is to permit employees who wish to engage in these outside activities to do so in those instances in which the likelihood that official information or position will be misused is minimal. In situations in which the potential for abuse is greatest, as in discussions of an agency's policies or programs, we would prohibit the receipt of compensation or anything of value. The Office of Legal Counsel has supported this treatment for the Department of Justice's lower-level employees, permitting them to teach in the area of law for which they have responsibility. In so doing, the Office of Legal Counsel suggests that a more liberal policy for lower-level personnel is warranted because they are not usually sought in order to ascertain the Department's official position on key policy issues. Furthermore, they are not authorized to state that position, so they are not likely to be attractive to an audience because of their affiliation with the Department.<sup>7</sup> We adopt this formulation because it comports with the spirit of section 735.206, which prohibits the use of official information to further a private interest, and the spirit of the Executive Order, which encourages teaching, lecturing, and writing.

Based on the concern expressed in subsection 201a(a) of 5 C.F.R. § 735 about the appearance of using public office for private gain, employees should avoid situations in which it appears that they are trading on their Government positions. Neither the organization sponsoring the conference or seminar nor the employee may use the employee's Government title when the employee is appearing in his or her personal role. On the other hand, if the agency deems it appropriate for the employee to participate officially, the agency may send the employee to the program on the Government's behalf. Although the employee's presence may incidentally benefit the conference sponsor, the employee is not precluded from using

his or her official title where his or her participation is a matter of official business. However, the employee would be doing his or her Government job and could not receive anything of monetary value from the organization arranging the program.

Another limitation on outside compensation for lecturing or writing is based on 5 C.F.R. § 735.202. That restriction focuses on the source of the compensation rather than on the subject matter discussed in the lecture or article. Section 735.202(a) prohibits an employee from accepting, directly or indirectly, any gift, gratuity, or other thing of monetary value from any of the following sources:

- (1) a person who has, or is seeking to obtain, business relations with the employee's agency;
- (2) a person who conducts activities that are regulated by the employee's agency; or
- (3) a person who has interests that may be substantially affected by the performance of the employee's official duty.

If a person or entity in one of those three categories requests the employee to speak at a program or to write an article, on any subject, the employee is prohibited from accepting an honorarium or any other thing of monetary value from the person or entity in return.

It is not always clear whether the employee has received compensation or anything of monetary value. Sometimes the organization offering the honorarium gives the money to a charitable organization on the employee's behalf. In the context of the outside earned income limitation of section 210 of the Ethics in Government Act, this Office has rendered its opinion that an honorarium paid to a charitable organization on a Government employee's behalf must be counted as outside earned income.<sup>8</sup> Similarly, an employee who is prohibited from receiving compensation or anything of monetary value for an appearance or article cannot get around the prohibition by having it paid to a charitable organization on his or her behalf.

In cases in which the employee is permitted to accept something of monetary value for lecturing or writing, the amount of the honorarium is limited by 2 U.S.C. § 441i(a). That provision prohibits an elected or appointed officer or employee of the Federal Government from accepting an honorarium of more than \$2,000 for any appearance or article. Subsection (b) of 2 U.S.C. § 441i explains that, for the purposes of this provision,

any honorarium paid by or on behalf of the employee to a charitable organization is not considered accepted by the employee for purposes of the \$2,000 limitation. This charitable exception only applies in situations covered by section 441i. It does not apply when the issue is whether the individual has accepted an honorarium or any other thing of value in violation of the standards of conduct.

As this Office has stated previously, a Federal employee may receive an honorarium for a lecture or article on a subject unrelated to his or her official position if the source of the honorarium or item of value is not otherwise prohibited. However, in doing so, the individual may not use Government time or resources, nor may the employee use his or her Government title.

The ethical considerations are somewhat different when a Government employee is asked to lecture or write in an area related to his or her agency's official responsibilities or programs in cases in which he or she will not receive compensation. Because the problems with supplementation of salary and use of office for private gain are not usually present in these situations, the agency has more discretion in allowing activities of this type.

In these instances, the employee should request prior agency approval. Before granting approval, the agency should carefully evaluate the situation to make sure that no private interest is profiting from the information inappropriately and that there are no other conflicts of interest. Even if the employee does not receive compensation directly, there are situations in which the employee may be prohibited from engaging in the activity under 5 C.F.R. § 735.206 where some other person or entity is profiting from the activity. Likewise, if a person or an entity contributes to a charity on the employee's behalf, this could constitute impermissible compensation. However, if these problems are not present, the employee may engage in the activity as long as the employee does not use Government time or resources to do so. In other cases, the employing agency may determine that the employee should engage in the activity only in his or her official capacity. In those instances, the agency should direct the employee to conduct the activity on behalf of the agency, with the agency paying the associated expenses.

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**1** Although Executive Order 11222 limits the category of officials to which 5 C.F.R. § 735.203(c) applies, OGE would encourage agencies to include in this prohibition all high-level



officials who are authorized to state their agency's position  
o key policy issues.

**2** 2 Op. Off. Legal Counsel 361, 363 (1977).

**3** Id.

**4** Several agencies have extended the prohibition of the Executive Order and 5 C.F.R. § 735.203(c) by regulation to all of their employees. As a result, the factors stated in the body of the memorandum are the factors that an agency should consider unless it has a more restrictive regulation or policy.

**5** 2 Op. Off. Legal Counsel 361, 365 (1977).

**6** 2 Op. Off. Legal Counsel 231, (1978).

**7** 2 Op. Off. Legal Counsel 361, 363 (1977).

**8** OGE Informal Advisory Letter 82 x 9.