



Book Deals

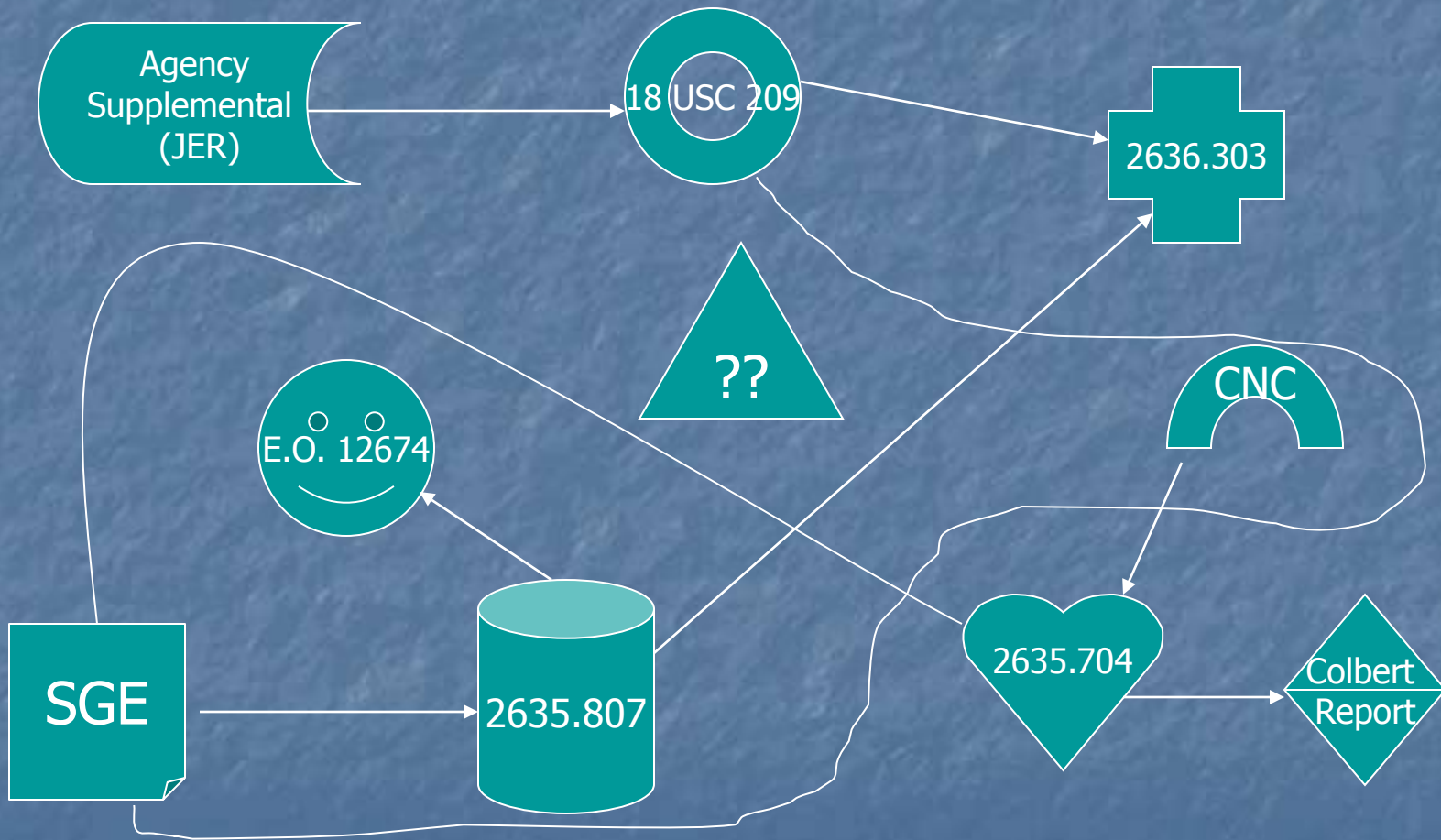


When may an employee receive compensation for writing a book?

(Seems like such a simple question!)

Department of the Army

Simple Answer



Template for Approaching Book Deal Questions:

- What category of employee is seeking compensation for writing a book?
- What is the book about?
- When is the writing performed and compensation received?
- What is the type of compensation?
- Who is offering the compensation and why?
- What other ethics rules and considerations may apply?

Category of Employee?

Regular Employees ARE:

- Officers
- Enlisted Members
- DOD civilian employees (including agency civilian employees)

Category of Employee?

Regular Employees are NOT:

- SGEs under 18 U.S.C. § 202(a), nor
- Covered noncareer employees under 5 C.F.R. § 2636.303(a), nor
- Employees appointed by the President to a full-time noncareer position described under 5 C.F.R. § 2635.804(c)(2).

Special Government Employees (SGE):

- Are those executive branch officers or employees specified in 18 U.S.C. § 202(a).
- Generally are employees who are retained to work temporarily for the Government for no more than 130 days in any 365-day period.
- Includes Reserve members serving on active duty involuntarily or for training for any length of time, or serving voluntarily on active duty for training for 130 days or less.
- Might or might not be paid for their work and they can work either full-time or on an intermittent basis.

Is the Book Related to Official Duties?

Two Main Classifications:

- Based on the subject matter of the writing
- Based on who is providing the compensation and why



Related To Official Duties

Based on Who Offered the Compensation & Why:

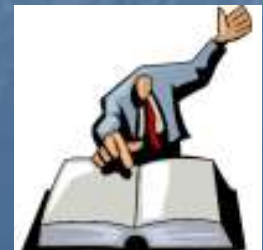
- Invitation from person affected by performance of employee's duties;
- Invitation because of official position;

Based on the Subject Matter of the Book:

- Part of official duties;
- Draws on nonpublic information;
- Matter to which the employee has been assigned within 1 year (some SGEs treated differently);
- Deals with ongoing or announced policy, program or operation of agency (not SGEs)

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

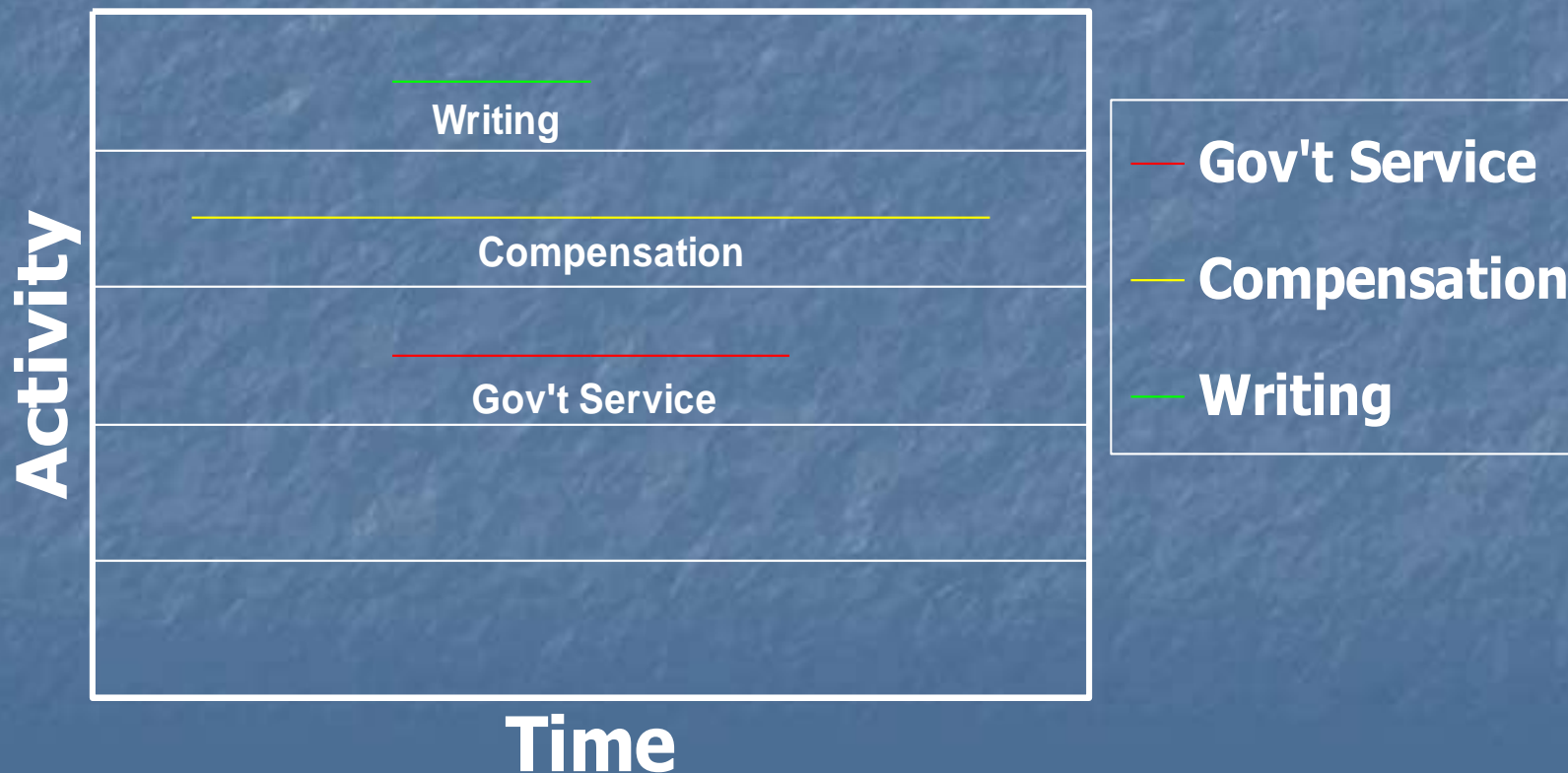
- For regular employees look to 2635.807(a)(2)(i) (Examples 3 - 6)
- For SGEs “related to official duties” look to 2635.807(a)(2)(i) (Examples 7 & 8)
- For a discussion and further analysis look to Informal Advisory Opinion 01x10 (November 13, 2001)



Timing of Writing and Receipt of Compensation?

Government service, compensation and writing must overlap at some point in order for the ethics rules to apply.

"Receive" Compensation



Type of Compensation?

- Advance
- Royalties
- Travel Expenses



(All considered "compensation" except travel expenses under 2635.807)

Who is Offering the Compensation and Why?

- 5 C.F.R. 2635.807(a)(2)(i)(C)(invitation or offer of compensation was extended by a person or entity who may be substantially affected by the performance of the employee's official duties)
- 5 C.F.R. 2625.807(a)(2)(i)(B)(circumstances indicate that the invitation to write the book was extended to the employee primarily because of his official position, rather than his expertise in the subject)

Other Considerations

- Writing related activities
- Supplemental agency regulations (JER)
- Financial conflicts of interest
- Impartiality
- Supplementation of salary/official duties
- No classified information
- Misuse of position
 - Use of nonpublic information
 - Reference to official position

Joint Ethics Regulation Considerations (1 of 2)

- A DOD employee who uses/permits use of his/her military grade, or who includes/permits inclusion of his/her title or position as one of several biographical details **shall make a disclaimer** if subject of writing deals in significant part with any ongoing or announced policy, program or operation of agency, and employee has not been authorized to present the material as the agency's position.
- Disclaimer shall state that the views presented are those of the author and do not necessarily represent the views of DOD or its Components
- Where a disclaimer is required for an article, book or other writing, the disclaimer shall be printed in a reasonably prominent position in the writing itself
- Joint Ethics Regulation, para. 2-207 and 3-307a

Joint Ethics Regulation Considerations (2 of 2)

- A lecture, speech, or writing that pertains to military matters, national security issues, or subjects of significant concern to DoD shall be reviewed for clearance by appropriate security and public affairs offices prior to delivery or publication. JER, para. 3-307b.



**TABLE 1: Timing of Writing and
Receipt of Compensation
Regular Employees and SGEs**

If the writing occurs:	And if the compensation is received:	Then, under the Standards of Conduct § 2635.807 :
Before Gov't Service	Before Gov't Service	Compensation permitted
Before Gov't Service	During Gov't Service	Compensation permitted
Before Gov't Service	After Gov't Service	Compensation permitted
During Gov't Service	Before Gov't Service*	1. Compensation barred if "related to official duties" 2. Compensation permitted if not "related to official duties"
During Gov't Service	During Gov't Service	1. Compensation barred if "related to official duties" 2. Compensation permitted if not "related to official duties"
During Gov't Service	After Gov't Service**	1. Compensation barred if "related to official duties" 2. Compensation permitted if not "related to official duties"
After Gov't Service	Before Gov't Service	Compensation permitted
After Gov't Service	During Gov't Service	Compensation permitted
After Gov't Service	After Gov't Service	Compensation permitted

* Section 2635.807 applies to a book advance made prior to Government employment, if the payment is for a book to be written during Government employment. Because the payment is conditioned on the subsequent performance of work after Government appointment, the receipt is not completed prior to employment.

** Section 2635.807 does not apply, however, if the employee writes the book "on speculation," without any agreement to receive compensation for the writing that occurs during Government service.

**TABLE 2: Timing of Contract, Writing and Compensation
Regular Employees and SGEs**

If the employee signs the contract:	The writing AND compensation occur:	Then, under the Standards of Conduct 2635.807 :
Before Gov't Service	After Gov't Service	Compensation permitted
During Gov't Service	After Gov't Service***	Compensation permitted

*** Section 2635.807 applies, however, if a book is based on a diary or notes kept while in Government service, if the keeping of the diary or taking of the notes are done pursuant to an agreement to receive compensation for these services.

Overview: Determining Whether a Regular Employee or an SGE May Receive Compensation for Writing a Book

I. Employee Category: Regular or SGE?

Regular: Not an SGE, CNC or PA employee
SGE: 18 U.S.C. § 202(a)

II. § 807 – “Related To Official Duties” What is the Book About? / Subject Matter Prohibitions

Regular:

5 C.F.R. § 2635.807(a)(2)(i)(E)(1) & (2)

- (E)(1) Matter in which employee assigned within previous year
- (E)(2) Concerning any ongoing or announced policy, program or operation

SGE:

5 C.F.R. § 2635.807(a)(2)(i)(E)(4)

- (E)(1) Applies to SGEs differently from Regular – See 5 C.F.R. § 2635.807(a)(2)(i)(E)(1)
- (E)(2) Does not apply to SGEs

III. What is the timing of the Work? / Receipt of the Compensation

Regular & SGE: 5 C.F.R. § 2635.807(a)(2)(iii) & (iv) – Receipt of compensation is usually attributable to the time the writing occurs, unless written solely on speculation during Government service.

Possibilities: Before, during or after Government service

(Continued) Overview: Determining Whether a Regular Employee or an SGE May Receive Compensation for Writing a Book

IV: What is the type of the Compensation?

Regular & SGE: 5 C.F.R. § 2635.807(a)(2)(iii) – All forms of consideration except travel

Possibilities: Advance; Royalties; Other Compensation or Consideration

V. 807 – “Related To Official Duties” Who is Offering the Compensation and Why?

Regular & SGE:

5 C.F.R. 2635.807(a)(2)(i)(B) Invitation extended primarily because of official position

5 C.F.R. 2635.807(a)(2)(i)(C) Invitation extended by person affected by employee’s duties

VI. What are Other Considerations?

Compensation for Writing Related Activities; Supplemental Agency Regulations (Joint Ethics Regulation; 18 U.S.C. § 208 (Financial Conflicts); 5 C.F.R. § 2635.502 (Covered Relationship - Publisher); 18 U.S.C. § 209 (Supplementation of Salary – SGEs Exempt); 5 C.F.R. § 2635.807(a)(2)(i)(A) (Writing as Part of Official Duty); 5 C.F.R. § 2635.702 (Public Office for Private Gain); 5 C.F.R. § 2635.703 (Use of Nonpublic Information); 5 C.F.R. § 2635.807(a)(2)(i)(D) (Draws Substantially on nonpublic information); 5 C.F.R. § 2635.704 (Use of Government Property); 5 C.F.R. § 2635.705 (Use of Official Time); 5 C.F.R. § 2635.807(b) (Reference to Official Position); 5 C.F.R. § 2635.802 (Conflicting Outside Employment & Activities)

Scenarios

- An Army Soldier is asked by a publisher to write a book for a publishing company about his duty experiences in Afghanistan
- An Army Soldier writes a book “on speculation” about her duty experiences that occurred less than one year ago in Afghanistan (no deal with publisher)
- An Army civilian employee writes a book for compensation about current Army operations in Afghanistan
- An Army civilian employee writes a book for compensation about the initial invasion of Iraq

Covered Noncareer Employees (CNC) and Presidentially Appointed (PA) Employees

- For your information only

Covered Noncareer Employees (CNC):

- Appointment must be one of several types of noncareer appointments.
- Must be in a position classified above GS-15 in the General Schedule or, for positions not under the General Schedule,
- Must be in a position for which the rate of basic pay is at least 120 percent of the minimum rate of basic pay payable for GS-15
- Cannot be an SGE
- May be Senior Executive Service Member
- Not General Officer or Admiral

Appointed by the President to a Full-time Non-career Position (PA):

- The employee must be appointed by the President (does not include military officers);
- The employee must be a full-time employee; (i.e. no SGEs)
- The employee must not be excluded from coverage.

Different Rules Apply to Covered Noncareer Employees (CNC) and Presidential Appointed (PA) Employees

- Definition of “Related to Official Duties” under 5 C.F.R. 2635.807 (CNC)
- 15% Outside Earned Income Limitation (CNC)
- Outside Earned Income Ban (PA)
- Definition of “Compensation” under the 15% limitation and the ban (CNC & PA)
[Royalties vs. Advance]

**TABLE 3: Timing of Writing and Receipt of Compensation
PA and CNC Employees**

If the writing occurs:	And if the compensation is received:	Then, under the Standards of Conduct 2635.807 : PA & CNC Employees	Then, under the Outside Earned Income Ban: PA Employees	Then, under the 15% Outside Earned Income Limitation: CNC Employees
Before Gov't Service	Before Gov't Service	Compensation permitted	Compensation permitted	Compensation doesn't count toward limit
Before Gov't Service	During Gov't Service	Compensation permitted	Compensation permitted	Compensation doesn't count toward limit
Before Gov't Service	After Gov't Service	Compensation permitted	Compensation permitted	Compensation doesn't count toward limit
During Gov't Service	Before Gov't Service*	1. Compensation barred if "related to official duties" 2. Compensation permitted if not "related to official duties"	1. Advance barred 2. Royalties permitted	1. Advance counts toward limit 2. Royalties do not count toward limit
During Gov't Service	During Gov't Service	1. Compensation barred if "related to official duties" 2. Compensation permitted if not "related to official duties"	1. Advance barred 2. Royalties permitted	1. Advance counts toward limit 2. Royalties do not count toward limit
During Gov't Service	After Gov't Service**	1. Compensation barred if "related to official duties" 2. Compensation permitted if not "related to official duties"	1. Advance barred 2. Royalties permitted	1. Advance counts toward limit 2. Royalties do not count toward limit
After Gov't Service	Before Gov't Service	Compensation permitted	Compensation permitted	Compensation doesn't count toward limit
After Gov't Service	During Gov't Service	Compensation permitted	Compensation permitted	Compensation doesn't count toward limit
After Gov't Service	After Gov't Service	Compensation permitted	Compensation permitted	Compensation doesn't count toward limit

* The rules restricting receipt of compensation by Government employees for writing do apply to a book advance made prior to Government employment, if the payment is for a book to be written during Government employment. This is the case because the payment is conditioned on the performance of work during Government service.

** The rules do not apply, however, if the employee writes the book "on speculation".

**TABLE 4: Timing of Contract, Writing and Compensation
PA and CNC Employees**

If the employee signs the contract:	The writing AND compensation occur:	Then, under the Standards of Conduct 2635.807 : PA & CNC Employees	Then, under the Outside Earned Income Ban: PA Employees	Then, under the 15% Outside Earned Income Limitation: CNC Employees
Before Gov't Service	After Gov't Service	Compensation permitted	Compensation permitted	Compensation doesn't count toward limit
During Gov't Service	After Gov't Service***	Compensation permitted	Compensation permitted	Compensation doesn't count toward limit

*** A book based on a diary or notes kept while in Government service, however, is considered writing during Government service if the keeping of the diary or taking of the notes are done pursuant to an agreement to receive compensation for these services.

Overview: Determining Whether a CNC employee or a PA Employee May Receive Compensation for Writing a Book

I. Employee Category: CNC or PA?

CNC: 5 C.F.R. 2636.303(a)

PA: 5 C.F.R. 2635.804(c)(2)

II. § 807 – “Related To Official Duties” What is the Book About? / Subject Matter Prohibitions

CNC & PA:

5 C.F.R. § 2635.807(a)(2)(i)(E)(1) & (2)

(E)(1) Matter in which employee assigned within previous year

(E)(2) Concerning any ongoing or announced policy, program or operation

CNC Only:

(E)(3) General subject matter area, industry, or economic sector

III. When is the Writing Performed and Compensation Received?

CNC & PA: 5 C.F.R. § 2635.807(a)(2)(iii) & (iv) - Standards of Conduct

CNC Only: 5 C.F.R. § 2626.303(b) & (c); § 2636.304(d) – 15% Limitation

PA Only: 5 C.F.R. § 2635.804(a) & § 2626.303(b) – Outside Earned Income Ban

– Under all these provisions receipt of compensation is usually attributable to the time the writing occurs, unless written solely on speculation during Government service

(Continued) Overview: Determining Whether a CNC employee or a PA Employee May Receive Compensation for Writing a Book

IV. What is the Type of the Compensation?

CNC & PA: 5 C.F.R. § 2635.807(a)(2)(iii) – (Standards of Conduct)- All forms of consideration
CNC & PA: 5 C.F.R. § 2635.804(c)(1) & 5 C.F.R. § 2626.303(b) – (15% Outside Earned Income Limitation and the Outside Earned Income Ban) - Most forms of consideration except royalties and actual and necessary travel expenses

Types of Compensation: Advance; Royalties; Travel Expenses; Speakers Fee, Honoraria & Other Compensation or Consideration

V. Who is Offering the Compensation and Why?

CNC & PA:

5 C.F.R. 2635.807(a)(2)(i)(B) Invitation extended primarily because of official position

5 C.F.R. 2635.807(a)(2)(i)(C) Invitation extended by person affected by employee's duties

VI. What are Other Considerations?

Compensation for Writing Related Activities; Supplemental Agency Regulations; 18 U.S.C. § 208 (Financial Conflicts); 5 C.F.R. § 2635.502 (Covered Relationship - Publisher); 18 U.S.C. § 209 (Supplementation of Salary); 5 C.F.R. § 2635.807(a)(2)(i)(A) (Writing as Part of Official Duty); 5 C.F.R. § 2635.702 (Public Office for Private Gain); 5 C.F.R. § 2635.703 (Use of Nonpublic Information); 5 C.F.R. § 2635.807(a)(2)(i)(D) (Draws Substantially on nonpublic information); 5 C.F.R. § 2635.704 (Use of Government Property); 5 C.F.R. § 2635.705 (Use of Official Time); 5 C.F.R. § 2635.807(b) (Reference to Official Position); 5 C.F.R. § 2635.802 (Conflicting Outside Employment & Activities)

Questions?

