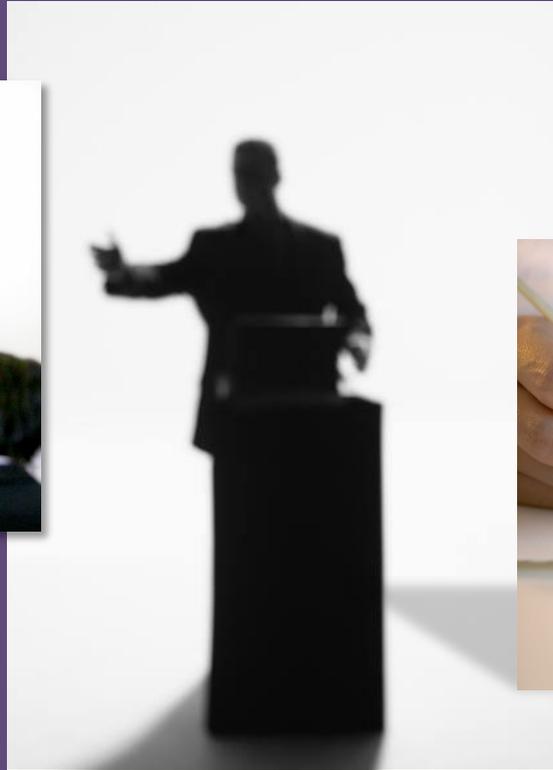


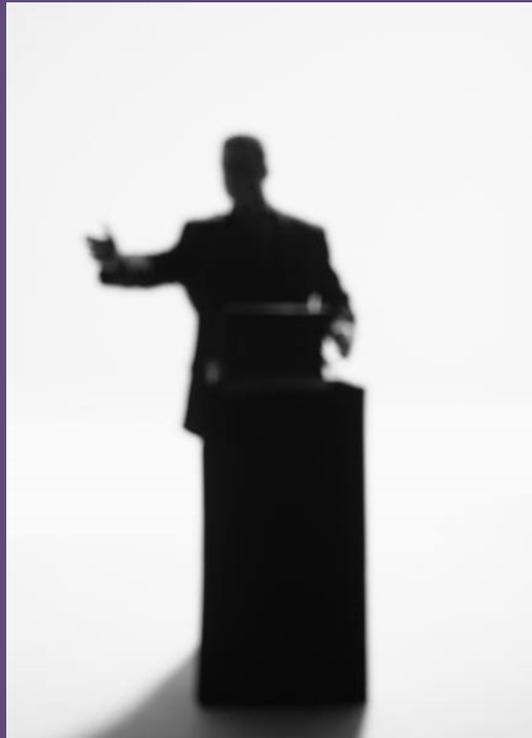
Teaching, Speaking & Writing



Presented by OJAG, Code 13
Standards of Conduct Branch
October 2015

SPEAKING & WRITING

Official Capacity





OFFICIAL SPEECHES

Questions:

- Is this an official speech?
 - 5 C.F.R. 2635.204(g)(1) – “assigned...to present information on behalf of the agency”
- Who decides?

If official, ...



OFFICIAL SPEECHES

GIFTS: Employees may accept certain gifts associated with giving an official speech:

- Free attendance at event on day of presentation 5 C.F.R. 2635.204(g)(1)
- Includes any part of conference fee, provision of food, refreshments, entertainment, instruction and materials furnished to all as an integral part of the event (not collateral). 5 C.F.R. 2635.204(g)(4)
- Can even include spouse or “plus one” 5 C.F.R. 2635.204(g)(6)
- Other items that meet a gift exclusion or exception (e.g., valued at less than \$20)

TRAVEL: Unsolicited travel support (31 U.S.C. 1353)



OFFICIAL SPEECHES

FUNDRAISERS: Where an employee will be giving an official speech at a fundraiser, provide guidance on:

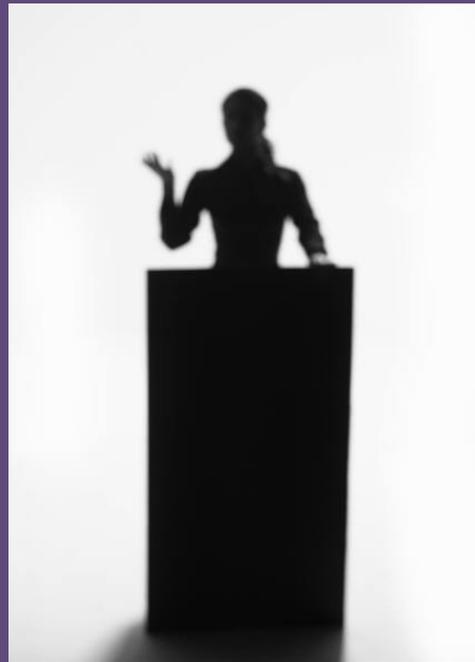
- Avoiding “**active and visible**” participation in the promotion, production or presentation of the event. 5 C.F.R. 2635.808. For example do **not**:
 - Ask for donations or be present on stage when they do
 - Serve as honorary chairperson
 - Sit at head table
 - Stand in reception line
- This includes not being a marketed “draw” for attendees (e.g., prominently feature on website/marketing material, or offered for special access at pre-event VIP reception), especially for passive fundraisers.

OFFICIAL SPEECHES & ARTICLES

- Are in the public domain.
- Require security and public affairs review.
DoDI 5230.29
- Cannot disclose non-public information.
5 C.F.R. 2635.703
- Cannot be compensated (does not include acceptable gifts). 18 U.S.C. 209.

TEACHING, SPEAKING & WRITING

Personal Capacity



THE MAGIC QUESTIONS

- Are they being compensated?
- Is the teaching, speaking, and writing “related” to the employee’s official duties?
- Is prior approval required? 5 C.F.R. 3601.107
- Will the employee’s title, position, or rank be used?



RULES

Criminal Prohibitions:

- Employees may NOT accept compensation from any source other than the US Government for services as a Government employee. 18 U.S.C. 209.
- Employees may NOT take any official action that has a direct and predictable affect upon their financial interests (e.g., someone who has offered to compensate them for teaching, speaking and writing). 18 U.S.C. 208.



RULES

Standards of Conduct Rule:

- Employees may NOT participate in particular matters where a reasonable person might question their impartiality. 5 C.F.R. 2635.502.
- Employees may NOT accept compensation for teaching, speaking, or writing ("TSW") that "*relates to*" your Federal job. 5 C.F.R. 2635.807.



RULES

DoD Supplemental Regs:

- Employees may be required to seek prior approval from an agency designee before engaging in outside business activities or employment. 5 C.F.R. 3601.107.
- Employee must use a disclaimer when using their military rank, position, or title, associated with personal teaching, speaking and writing related to his or her official duties. 5 C.F.R. 3601.108; *see also* 5 C.F.R. 2635.807(b).
- *See also*
 - Joint Ethics Regulation, 2-206, 2-207 and 3-305
 - DoDI 1334.01 (Wearing of the Uniform)



IT “RELATES TO” OFFICIAL DUTIES

IF:

- Done as part of their job;
- It appears the invitation was offered PRIMARILY due to their job, not their subject expertise;
- The offeror's interests may be affected substantially by performance or nonperformance of their job;
- The activity "draws substantially" on ideas/data that are nonpublic information; or



IT “RELATES TO” OFFICIAL DUTIES

IF:

- The TSW subject deals "in significant part" with:
 - Matters to which they are assigned, or were assigned during the previous year;
 - Ongoing or announced policies, programs, or operations of the DoD component agency*; or
 - (Non-career SES employees only) a subject matter area, industry, or economic sector primarily affected by DoD component agency* programs and operations.

*For teaching, speaking, and writing, look to the DoD component agency as listed in 5 C.F.R. 3601.102.



Exception: IF IT RELATES TO EXPERTISE

- Please note that the “related to” standard does not preclude an employee from receiving compensation for teaching, speaking or writing on a subject within the employee's discipline or *inherent area of expertise based on his educational background or experience* even though the teaching, speaking or writing deals *generally* with a subject within the agency's areas of responsibility.
- TIP: Read through examples and notes at 5 C.F.R. 2635.807(a)(2).



Exception: TEACHING CLASSES

- With agency approval, an employee may be able to
- Teach a course (multiple presentations*) and receive compensation if
- Offered as part of either:
 - The regular curriculum of qualifying** institutions of higher learning;
 - Elementary schools; or
 - Secondary schools.

OR

- A program of education/training sponsored and funded by the Federal Gov't or by a state/local gov't other than those above.

* If multiple presentations are not involved, this should be viewed as a speaking engagement with payment viewed as honoraria.

** See 20 U.S.C. 1141 and 2891(2) and (8) for qualifications.



AND THEN THERE'S THE DISCLAIMER

DoD Supplemental Rule: 5 CFR 3601.108.

If they use (or permit the use) of their title, position, or military grade as one of several biographical details given to identify themselves in connection with TSW, a disclaimer is required, *if*:

- The subject deals in significant part with any ongoing or announced policy, program or operation of their DoD component Agency (5 C.F.R. 3601.102); and
- They are not authorized by appropriate Agency officials to present that material as the Agency's position.

AND THEN THERE'S THE DISCLAIMER

DoD Supplemental Rule: 5 CFR 3601.108.

The disclaimer must expressly state that the views are their personal views and not necessarily those of the Department or its components:

- For speaking engagements, oral disclaimer permitted if given at the beginning of the presentation.
- For written materials, disclaimer must be printed in a reasonably prominent position.



WRITINGS

- Employees may be able to accept compensation for writing while they are not Federal employee—but timing is important. For specifics, *see* OGE DAEogram (DO-08-006), Book Deals involving Government Employees.
 - Great chart to review for timing considerations
- Even if authorized, writing in personal capacity in area of expertise may pose concerns for a DoD employee. TIPS:
 - Not on duty time
 - Not using nonpublic Government information
 - Not using official title, except as permitted with disclaimer
 - Ensure supervisor knows



SPECIAL RULES FOR SGEs

- The “related to” restriction applies slightly differently to Special Government Employees which include many *reservists* (serve part-time intermittently for less than 130 days in a 365 day period). 18 U.S.C. 202.
- 5 C.F.R. 2635.807 (a)(2)(i)(E)(4), where the SGE has not served or is not expected to serve for more than 60 days during the first year or any subsequent year of that appointment, the restriction applies only to particular matters involving specific parties in which the SGE participated or is participating personally and substantially.

EXCEPTION TO THE EXCEPTION

NON-CAREER SES EMPLOYEES

- To receive compensation for teaching a non-career SES **must**
 - Submit a written request to the Designated Agency Ethics Official (DAEO) **AND**
 - Receive specific authorization from the DAEO in advance.
- The request **must** set out the following:
 1. Your official duties
 2. Sponsor of the course
 3. Source of payment
 4. Subject matter being taught
 5. Student(s) or class
 6. Terms of the compensation arrangement.
- The **DAEO MAY APPROVE** your request **ONLY IF**:
 - Teaching won't interfere with doing your job;
 - The invitation doesn't appear based **PRINCIPALLY** on your job;
 - Compensation doesn't violate outside earned income limitations; and
 - Neither the teaching nor the compensation otherwise violates other ethics laws or regulations.

UNPAID TSW RELATED TO...?

If uncompensated, can an employee teach, speak or write on matters related to his official duties?

Yes, but ... (best advice)

- Remember, uncompensated TSW is still subject to all other applicable ethics restrictions
 - Not on duty time
 - Not using nonpublic Government information
 - Not using official title, except as permitted with disclaimer
 - Ensure supervisor knows
- Get Security and Public Affairs Review
- Make sure to meet disclaimer requirements as applicable

OTHER RECOMMENDED CLEARANCES

- Security Clearance should be obtained before releasing information to the public when presenting in an official capacity consistent with DoD Instruction 5230.29.
- Public Affairs
- Recommend they ensure their supervisor is aware



Scenario

A Navy Flag Officer is invited to speak at a Veteran's Day Memorial Service sponsored by a local NFE. The topic of the speech will be appreciation for veterans, and will likely draw on the speaker's personal experience with veterans issues.

- Should this be official or unofficial?
- May she be given an honorarium for her comments?
- May she wear her uniform to the event?
- May she partake in the free luncheon following the speech?



Scenario

Navy Chaplain writes a book that is a collection of reflections and prayers concerning combat service, some of which were written while the Chaplain was deployed with USMC. Chaplain received \$25,000 advance payment prior to publication.

- Is the subject of the book “related to” the Chaplain’s official duties?
 - Undertaken as *part of* his official duties? 5 C.F.R. 2635.807(a)(2)(i)(A)
- What if only minimal portions of the book are related to his official duties?
- Any issue with accepting advance payment?
- Does it matter that he’s a chaplain?

THE END

**Thank you
for your attention!**