

Note: The honoraria ban was held unconstitutional by the U.S. Supreme Court in *U.S. v. National Treasury Employees Union*, 513 U.S. 454 (1995).

Office of Government Ethics

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Letter to a Publisher dated July 9, 1991

This is in response to your letter of June 14, 1991, concerning the honoraria ban and its effect on employees [of an agency] who may wish to write books for your company. I will give you a general overview of the prohibition and then specifically address the conflict of interest and standards of conduct considerations to which potential authors from the [agency] should be aware. The advice similarly extends to potential authors from [another agency] with whom you may deal.

Please note that each agency of the executive branch has its own ethics officer. [This agency's] employees who desire to write books should consult their ethics officer to insure that they will not be violating any ethics rules. To facilitate this goal, a copy of this letter will be forwarded to the Designated Agency Ethics Official.

The current guidance on the honoraria ban is the interim regulations released in January 1991 by the Office of Government Ethics, to be codified at 5 C.F.R. Part 2636. These interim regulations implemented the ban on honoraria contained in the Ethics Reform Act of 1989 (the "Act"), 5 U.S.C. App. § 501(b). The interim regulations indicate the extent of the honoraria ban and specify the areas that are outside the scope of the restriction.

The Act, at section 601(a), amended section 501(b) of the Ethics in Government Act to state that "[a]n individual may not receive any honorarium while that individual is a Member, officer, or employee." The term "honorarium" is defined for the purposes of this section as:

a payment of money or anything of value for an appearance, speech or article by a Member, officer or employee, excluding any actual and necessary travel expenses incurred by such individual (and one relative) to the extent that such expenses are paid or reimbursed by any other person, and the amount otherwise determined shall be reduced by the amount of any such expenses to the extent that such expenses are not paid or reimbursed.

5 U.S.C. App. § 505(3). This section became effective on January 1, 1991.

The honoraria prohibition covers an appearance, speech or article. Thus, a[n] employee who submits a book review or journal article cannot accept compensation for it while that person is a Federal employee. However, under the regulations it is still possible for that person or other executive branch employees to receive compensation for certain activities, such as writing books, chapters of books, works of fiction, lyrics, or music without violating the ban. Barring any other conflict of interest or standards of conduct problem, a[n] employee who writes a book for [a specific series of books contemplated by your company] can accept an honorarium.

Potential authors from the executive branch should consider the conflict of interest and standards of conduct issues that may arise, even though writing a book falls outside the honoraria ban. The relevant prohibited areas for such Federal employees can be summarized according to the following categories.

1. Writing about one's employing agency.

Executive branch employees have long been prohibited from receiving any compensation, including honoraria, for speaking and writing on subject matter that focuses specifically on the employing agency's responsibilities, policies and programs, or that may be perceived as conveying agency policies. Therefore, the employees with whom you deal must not write about these areas in their books.

2. Using non-public information.

Section 735.206 of Title 5 of the Code of Federal Regulations prohibits any Government employee from receiving an honorarium or any other thing of monetary value for a lecture or article containing non-public Government information which would further a private interest. This rule would apply to books written by executive branch employees. Potential writers from [this agency] cannot use any information from their [agency] that is unavailable to the public. This information could cover [official agency] photographs included in the books you publish.

3. Using Government time and resources.

Employees may not use Government time or resources in writing their books. Neither may the writing of the work interfere with their official duties.

4. Using public office for private gain.

Section 201(c)(1) of Executive Order 11222 prohibits a Federal 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 5 C.F.R. § 735.201a(a), the employee must be concerned with appearances even where the employee's writing is not prohibited by a more specific regulation. In cases in which an employee is engaged in writing 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.

An executive branch employee may not use his or her title for private gain. Any biography that appears in your books must not highlight the author's title or connection with the [agency]. The employee is not writing on official business and should not appear to do so, nor should your company appear to solicit business through the use of the employee's title. You may state, along with other background information on the individual, that the author currently serves with the [agency].

In order to avoid the appearance of impropriety, a disclaimer on the title page may be necessary where the author's biography seems to emphasize his or her connection to the [agency] or where the book appears to be [an agency] publication. The disclaimer would state that the views of the author are those of the author alone and not necessarily those of the [agency], and that the book is not an [agency] publication.

I hope this information is helpful to you. If you have any questions about this letter or the honoraria ban, please write or call this office at (202) 523-5757. Thank you for your interest in the Office of Government Ethics.

Sincerely,

Stephen D. Potts
Director