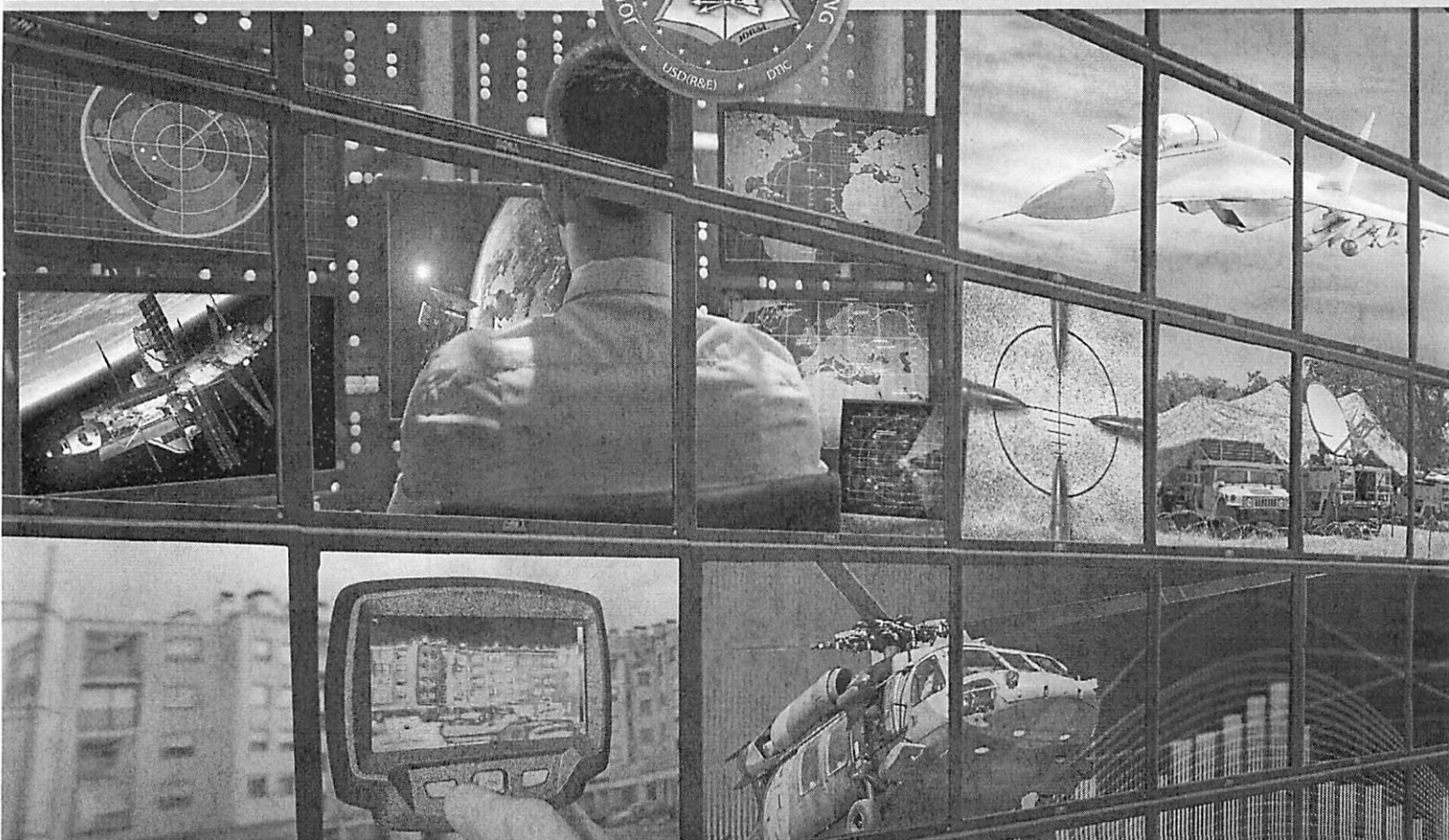


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From the desk of Jeffrey Green, Senior Attorney at the DoD's Office of General Counsel

Biography

Jeffrey Green was promoted to the position of senior attorney and Deputy Designated Agency Ethics Official at the Department of Defense in November 2000. Prior to that, Jeff was a deputy ethics official for the Department of Veterans Affairs Office of General Counsel, serving in that job for over 8 years. In 1997, he was selected for a 6 month detail to serve in the Office of the Counsel to the President. He has given numerous presentations on the Standards of Ethical Conduct for Employees of the Executive Branch. He has published several articles on ethics that have been approved for use by the Office of Government Ethics in lieu of an "in person" regulatory training requirement. He also has written a law review article on the History of the Federal Conflicts of Interest Law, and on the Emoluments Clause to the Constitution. He has served as a Guest Lecturer at the Georgetown University School of Law. Prior to Government work experience, Jeff worked in private practice where he developed ethics compliance programs for corporations and taught a business ethics course. Jeff graduated with a BA from Northwestern University and with both a JD and MBA from Washington University in St. Louis. He is a member of the bars of Texas, Pennsylvania and the District of Columbia.

Teaching, Speaking and Writing – When is it Acceptable by Federal Employees?

Like private sector employees, many career federal employees enjoy teaching, speaking, and writing and can participate in such activities. There is, however, a limitation in the "Standards of Conduct for Employees of the Executive Branch," (Standards) specified at 5 CFR 2635, on employee compensation for teaching, speaking, and writing that is closely related to an employee's official duties. The rule is clear that an employee cannot receive payment from a non-federal source to perform official functions. Teaching as part of a regularly established curriculum of an institution of higher education, an elementary school, or secondary school is an exception to this rule. This article will not address the curriculum exception.

An activity such as teaching, speaking, or writing can relate to an employee's official duties in three instances:

- It is undertaken as part of his or her official duties.
- The invitation to the employee results primarily because of his or her official position rather than his or her expertise, such as an invitation extended by a sponsor which has interests that the employee's official duties may substantially affect.
- The activity is based on non-public information.

The Standards give examples of what is permissible under the rule. One example involves a scientist at the National Institutes of Health (NIH) whose principal area of research is the molecular basis of the development of cancer. The scientist could not receive compensation for writing a book that focuses specifically on the research she conducts at NIH because it relates to her official duties.

However, the scientist could receive compensation for writing or editing a textbook on the treatment of all cancers provided that the book does not focus on recent research at NIH, but conveys scientific knowledge gleaned from the whole scientific community. The book, as the example states, might include a chapter, among others, that discusses the molecular basis of cancer development. Additionally, the book could contain a brief discussion of recent developments in cancer treatment even though some of these developments derive from NIH research if the information about the developments is available independently to the public.

Likewise, an employee may receive compensation for speaking if his or her talk is generic and not exclusively about his or her federal work performed in an official capacity. The employee may only accept compensation in a personal capacity while on annual leave. Further, the employee could not represent or imply that he or she is attending and speaking in an official capacity. If the employee insists on attending in an official capacity, then the employee cannot accept compensation for giving such a speech. Accepting compensation while not on annual leave would violate a criminal statute that prohibits an employee from receiving payment from a non-federal source for performing his or her federal job. An employee

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From the desk of Jeffrey Green, Senior Attorney at the DoD's Office of General Counsel

speaking in his or her personal capacity may, along with other biographical information, include his or her Department title in his or her biography. The employee should make an affirmative statement that he or she is not speaking in an official capacity.

An employee who is unsure whether the speech is too closely related to his or her official position should check with his or her agency's ethics official. Most agencies have pre-approval requirements for such activities. Approval by the ethics official should protect the employee from violating an ethics regulation. If, after consultation with the ethic official, there continues to be uncertainty about whether the employee's official duties relate to the subject of the teaching, speaking, or writing, the most prudent course of action would be to decline any compensation.