

Teaching, Speaking and Writing as an Outside Activity

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Overview

- Government-wide rules have been in place since 1992, specifically, the “deals in significant part with” test
- New NIH rules created in 2005 that prohibit certain activities with certain entities unless one of the exceptions apply
- Subject of activity must pass both sets of rules
- Even if activity passes both sets of rules, consider whether an appearance of a conflict is created, so activity should not be undertaken
 - Appearance of Use of Public Office for Private Gain

Government-wide Rules

- **Teaching, Speaking or Writing as an Outside Activity**
 - Cannot be Compensated for Teaching, Speaking or Writing that “Deals in Significant Part with” an Employee’s Official Duties
 - Compensation does not include travel reimbursement

Subject of the Activity “Deals in Significant Part w/ a Matter” when:

- “The subject of the activity deals in significant part with any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period.”
 - Look at the topic of the activity, not the type of activity
 - Irrelevant that PD does not contain a lecturing component
 - Consider the scope of subject matter of the proposed activity
 - Generally, outside activities should be on a broad topic
 - Can contain some slides on NIH research, w/ 1-2 on your research
 - Publishing data does not finish the research or close the matter
 - If research is ongoing **and** you are still assigned to it, cannot get paid to lecture on it
 - The data has not been publicly released until now
 - Can disseminate unpublished data through an official duty speech

Subject of the Activity “Deals in Significant Part w/ a Matter” when:

- The invitation was extended to the employee by someone who has interests that may be substantially impacted by the employee’s official duties
 - E.g., a CRADA partner
 - The timing of invitation can be telling
 - What are you working on?
 - And with whom are you working?

Subject of the Activity “Deals in Significant Part w/ a Matter” when:

- The circumstances indicate that the invitation was extended to the employee primarily because of his official position rather than his expertise on the subject
 - The subject of the proposed activity is the employee’s official research, rather than a general or broad topic
 - The organization learned of the employee through his or her official duties

NIH-specific Rules; the first 3

- Type of Activities
 - Compensated teaching, speaking or writing
 - Compensation does not include travel expenses
 - Compensated or uncompensated employment
 - Compensated or uncompensated self employment

NIH-specific Rules; the second 3

- Substantially Affected Organizations (SAOs)
 - Generally, pharmaceuticals, biotechnology and medical device manufacturing companies
 - Look to underlying clients
 - Law firms (expert witness service)
 - Venture capitalist firms
 - Market research firms

NIH-specific Rules; the second 3 (con't)

- Supported Research Institutions, generally Grantees
 - Currently, or within the last year, submitted a grant or CRADA to any NIH IC
- Healthcare Provider or Insurer
 - Doctors
 - Hospitals
 - Insurance companies

NIH-specific Rules; the exceptions

- Speaking activities (if pass the “deals in significant part with” test)
 - CME lectures
 - Grand Rounds lectures
 - One or several classes that are part of an established course
- Writing or editing for a peer-reviewed journal
- Clinical practice

NIH-specific Rules; the exceptions (con't)

- DSMB Service
- Grant Review
- Employment involving manual or unskilled labor, hobbies, artistic endeavors, or interests unrelated to the health and scientific research of the NIH, including clerical or administrative work
 - Bookkeeping for a doctor's office
 - Teaching aerobics at a grantee institution

Supervisor's Role in the Review

- Is the activity more appropriately performed as an official duty activity. Consider:
 - Whether the subject matter of the activity “deals in significant part with,” or is an extension of, the employee’s current work (see above)
 - The venue where the employee will be asked to discuss that information
 - The time obligation associated with the activity

Questions