hi my name is Seth jaffy I'm the chief of the ethics law and policy Branch at the US office of government ethics and

0:09

welcome welcome today's introductory class into advising employees who want to write a book uh and get paid for it

0:16

um advising you know outgoing officials as well as incoming nominees in this area really picks up in the time period

0:24

leading up to an election and continues after the election so we thought this would be great time for a brief

0:31

refresher on the basic rules that apply to outgoing and incoming employees concerning when and under what

0:37

circumstances an employee may receive compensation for writing a book I'll start by reviewing many of the

0:44

main points covered in OG's book deal advisory opinion La 08-06 that was issued in 2008 I'll walk

0:52

us through the basics of any book deal analysis as well as how best to use the job AIDS contained in the advisory and

1:00

those job AIDS in The Advisory are very important and very helpful I think now since the issuance of that advisory in

1:07

2008 OG has received many variations on several complicated book deal questions

1:12

that are not directly addressed in that opinion we have given out consistent oral advice on these questions um but

1:20

I'm not sure if these answers are known throughout the wider ethics community so if you'd like to better understand how

1:27

to council employees who might want to shop a book deal around on their way out of government service or who might want

1:33

to engage in promotional activities concerning a book they're writing or have written look at La

1:40

20-07 we're not going to cover those Advanced topics today today is the introductory class so before we jump

1:47

right in let's take a minute to reflect on the main purposes Behind These regulations placing limitations on

1:54

employes ability to get paid for outside writing next slide please

2:03

so take a second look at these people um and think to yourself do I recognize

2:08

these people and think that what do they have in common well I'll tell you what they have

2:15

in common what they have in common is that they both were elected officials who resigned from Office amid book deal

2:21

scandals next slide

2:28

please so the first person the person on the left Katherine Pew she's the recent

2:34

former mayor of Baltimore and in 2019 she pled guilty to federal crimes tied

2:40

to a children's book series she wrote she pled guilty after the FBI investigated her writing and selling a

2:46

series of books known as healthy Holly books with titles like exercising is fun

2:52

and vegetables are not just green however money is I added that last bit

2:58

while she was a board member of the University of Maryland Medical system umms Pew sold books to that same medical

3:06

system the arrangement generated approximately $800,000 for the ex- mayor

3:12

much of it from companies that had business ties to the city government in addition it was subsequently discovered

3:18

that the $800,000 in payments were significantly more than the book contract was objectively worth the

3:26

charges she's bled guilty to wire fraud conspiracy conspiracy to fr the government and two counts of tax evasion

3:32

carried a maximum penalty of 35 years in prison and she was subsequently sentenced to 3 years in

3:38

prison now the other person on that slide um was Jim Wright he's The Not So

3:43

recent former Speaker of the House of Representatives Mr Wright resigned as Speaker of the House of Representatives

3:49

in 1989 as a result of an Ethics investigation by house Ethics Committee

3:54

into sales of his book of speeches and assays Mr w was suspected of

4:00

circumventing house house rules on outside income by accumulating more than $54,000 in royalties from bulk sales of

4:08

his 1984 book reflections of a public man the accusation was that in Li of

4:14

campaign contributions or speaking fees which were tightly regulated groups with business before the house made bulk

4:21

purchases of the book in April 1989 the Ethics Committee reported that it found reason to believe that Mr Wright had

4:27

violated the rules of congression conduct now the point here is that the

4:33

ethics laws and rules in this area can be very complicated and difficult to provide guidance on however I want all

4:40

of us to keep in mind the very important purposes animating the rules specifically these rules are designed to

4:48

ensure among other things that executive branch officials do not receive bribes

4:53

in the form of bogus payments for writing and more subtly the rules are designed to ensure that any executive

5:00

branch official who gets paid to write a book while they are in government Service First be paid in amount

5:06

commerate with the service they provide second that it concern a topic they have

5:12

actual expertise in third to ensure that the book is not related to their official Duty and fourth be offered by a

5:20

source who is not in a position to benefit from the actions the employee takes on the

5:26

job so let me ask you again to think to yourself if these four goals are

5:31

accomplished what ultimately is achieved next slide

5:39

please so the goal is that of ensuring that public office is not used for

5:45

private gain and that can increase the trust in government decision making so for example um Miss Pew and Mr Wright um

5:54

their um the trust and the decisions that they made affecting the entities that were paying them for their writing

6:02

certainly would be called in question and these purposes animate all the rules that we'll go over

6:11

today next slide

6:17

please so when can an employee get paid for writing a

6:23

book um it seems like such a simple question although it seems simple

6:29

answering when an employee may receive compensation for writing a book is anything but simple this is a difficult

6:34

area because the many laws regulations and executive orders that govern OG

6:40

issued um advisory opinion on March 6 2008 and this was our attempt to pull together all these

6:47

divver authorities this opinion is a comprehensive guide for ethics officials to refer to when confronted with an

6:54

employee who wants to write a book in their personal capacity and get paid for it legal advisory 20 7 um followed and

7:01

that concerns issues that um stem from marketing a book today we'll review some of the

7:07

major points in the advisory opinion from 2008 but there will not be time to go over everything we'll emphasize the

7:14

quick reference tools the tables and citation overviews contained within the opinion and again these job AIDS are

7:21

very important and often provide um a quick reference tool for people who um

7:26

have a particular question but may not need to know the answers to every

7:32

question one thing I want to highlight up front is that section 807 of the

7:37

standards of conduct the teaching speaking and writing rules um do not bar

7:43

any employee from writing on any subject it does however contain broad prohibitions against an employees

7:50

receipt of compensation for writing that relates to their official duties therefore section

7:57

807 only prohibits the receipt of compensation for writing under certain

8:03

circumstances so if a person wants to engage in outside writing and not get paid for it then the teaching speaking

8:09

and writing rule in 807 doesn't even apply now in our attempts to pull

8:14

together these diverse rules OG initially tried to put together one comprehensive flowchart or decision tree

8:21

as a guide however each time we tried to do so our flowcharts ended up looking something like this next slide please

8:32

we came up with all sorts of you know crazy looking flowcharts graphs and visual aids you know we quickly came to

8:40

determination that we had a problem and the problem was there were just so many rules that applied agency supplemental

8:46

regulations 18 USC 209 supplementation of salary um executive order

8:52

12674 the nature of the employee whether they're an sge or not 807 2636 303

9:00

that's the definition of compensation CNC whether someone's a covered non-career employee misuse of position

9:06

concerns here it mentions the coar report we had people going on TV promoting their books and obviously

9:12

misuse of title issues became an issue so we recognize that this problem was

9:18

that there were so many issues to address each time an employee walks into your office and tells you they want to

9:23

write or have written a book and they want to know whether they get paid for it and those issues involve for example

9:29

Le who wrote the book what is it about what is the type of compensation being

9:35

offered when is the compensation received who is making the offer of the payment why are they making the offer

9:42

are there any other considerations um such as um you know

9:49

someone's use of title so as a result we decided to structure an advisory opinion

9:54

around the answers to these and related questions this not a flowchart or decision tree exactly however it is a

10:01

suggested structure um to approach book deal questions and so there are six main

10:08

questions that I've mentioned um a couple I'll just highlight here um it's

10:13

always going to be um important to know whether a book is related to the employees official duties and that could

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be related to official duties because what is the book about the subject matter of the book of course that is one

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way it can be related to an employees official duties in addition who is offering the compensation and why and

10:31

what's important to know is that the prohibition kicks in even if the subject matter of the book is not related to the

10:38

person's official duties but the offer is made by an impermissible Source or for an impermissible

10:45

reason now the advisory includes two tables that could be used as quick reference gu as I mentioned before and

10:52

that might help you to quickly and easily determine the questions most relevant to your particular

10:57

situation and we'll be going over in slides in the future in this presentation um these quick reference

11:03

guides and how to use them um there are tables and one table addresses the rules

11:08

that apply to regular employees and sges while the other table addresses how various rules apply to cover non-career

11:15

or CNC employees and those appointed by the president to a full-time non-career position or PA

11:22

employees a separate table is necessary for CNC and Pa employees because they

11:28

are subject to additional rules such as a 15% outset earn income limitation and

11:33

the outset earn income ban now one thing I want to emphasize here is that 807 the

11:39

15% outset or an income limitation and the outset or income ban are all

11:44

restrictions focused on compensation and receip of compensation and this will be the focus that we'll talk about

11:51

today however as you all know there are always many other ethics related considerations that come up um that are

11:58

not compensation related when you're advising employees who want to write a book such as the use of title or misuse

12:04

of position just the name two so we also included in the advisory

12:10

two very helpful job AIDS two single page citation R overviews containing all

12:16

the relevant citations keyed to each question so you would know where to look

12:21

up the answers including all of those non-compensation related issues and

12:27

we'll go through those um ation overview shortly next slide

12:33

please so let's now talk about the specific questions that the um legal

12:39

advisory is um oriented around and the first question is um who

12:45

is writing the book what type of employee are there and this is important because the ethics rules apply

12:51

differently depending on what type of employee is seeking advice on writing a book and getting paid to do so and the

12:57

first part of our discussion today today we'll focus on regular employees and sges and in the second part we'll move

13:03

on to covered non-career employees um and presidentially appointed um employees to full-time non career

13:11

positions so what is a regular employee well most employees in the federal

13:17

government in the executive branch are regular employees but there is no one definition of what a regular employee is

13:23

basically a regular employee is defined by what I'm here or she is not a regular employee is not a special government

13:31

employee they're not a political appointee or a covered non-career employee or presidentially appointed to

13:38

um a senate presidentially appointed to a full-time non-career position so regular employees are your you know

13:44

you're kind of normal regular GS 12 13 14 and so forth um and most employees

13:50

are regular employees but they're defined but what they are not now special government employees

13:56

what's a special government employee in general a special government employee is an employee who is retained to work

14:03

temporarily for the government for no more than 130 days in any 365 day period

14:09

And depending if you're a regular employee or a special government employee some of the book Deal rules

14:14

will apply differently next slide

14:20

please so once you know what type of employee you're advising the next question is what is the book about is

14:27

the book related to an employe official duties because remember the Restriction is being able to receive

14:33

compensation for writing a book that is related to your official duties that's

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where the Restriction is so 807 describes six ways in which a book may

14:43

be considered related to a regular employees or an sg's official duties if

14:49

the employees writing Falls within any one of these six categories then usually the employee may not receive

14:55

compensation for the writing again it doesn't mean they can't do the writing it means they can't receive compensation

15:01

for it now the six ways in which a book may be related to an employees official

15:07

duties of a regular employee or an sge can be divided into two main

15:13

classifications first a book may be related to an employees official duties based on the book's subject matter now

15:21

the subject matter restriction is important of course because we want to ensure that a government employee does

15:26

not improperly personally benefit from us using non-public government information or uses their official

15:32

position to enrich themselves at the expense of the public interest determining whether the subject

15:38

matter of a book relates to an employees official duties is a common issue that you'll probably encounter often now

15:45

because of our time limitations today we're not going to review um the analysis of whether a book relates to an

15:52

employees's official duties um in fact a whole class can be taught on that and a whole class has been taught on that if

15:59

you'd like to learn more about this you can go to OG's website and Under The Institute for ethics and government

16:04

there's a 1-hour ethics fundamental series class titled outside activities teaching speaking and writing related to

16:11

official duties so although we won't go over that today it's certainly covered in depth in the legal advisory it's

16:17

covered in depth in that class but that is a very common issue that will come up that you'll have to address when you're

16:23

confronted with an employee who wants to know whether they can get paid for their outside writing

16:29

now second a book may be considered related to an employees's official duties based on who is providing the

16:36

compensation and why they're offering that compensation now it seem a little counterintuitive that a book becomes

16:43

related to an employees official duties regardless of the topic of it but based on who offers the compensation and why

16:50

um but there are very significant reasons um why these um limitations are

16:55

in place so one provision of 807 deals with the possibility that the public May

17:00

question the Integrity of a government official who is being compensated for writing a book um based upon who the

17:07

offer was made by so if the offer is made by a prohibited Source or a bad

17:13

prohibited source as we say someone who um can be affected by the performance or

17:18

non-performance of the government employees job to whom they are making the offer if that's the case then

17:24

regardless of the topic of the book a person will not be able to write that book and get paid for it and think get

17:30

back to Jim Wright and Katherine Pew they wrote books and got paid by people

17:36

who could be affected by the performance or non-performance of their jobs and obviously called into question the

17:41

Integrity of their service now a second provision deals

17:46

with the possibility that the Integrity of a government official writing a book may be questioned based upon why the

17:53

offer to write the book was made so if the circumstances indicate the

17:58

invitation to write the book was extended to the employee primarily because of his or her official position

18:04

rather than his or expertise in the subject matter so for example and I've seen this a Publishing Company might

18:11

make it a standing offer to all cabinet secretaries to pay them to write their autobiography in that case it's clear

18:18

that the offer was made um because of their official position and as a result um there's a

18:24

Prohibition on the um cabinet secretary in that case to be able to write that book and get paid in any manner for it

18:31

next slide please so the next question relates to

18:37

timing and this is um fairly complicated we'll go into this a little bit in depth

18:43

here um but it won't touch on every topic that relates to timing but the timing of the writing and the receipt of

18:49

the compensation so as we said in order for the rules to apply there has to be

18:55

writing and there has to be government service and there has to be reced of compensation but all these have to

19:01

overlap in order for our rules to apply so because the standards of conduct only apply to employees it is critical that

19:08

the writing occurred during the employes government service and that he or she receive some portion of the compensation

19:16

while he or she is employed by the government so timing issues make the analysis of book deals particularly

19:23

difficult however there are a couple of rules of thumb that can make the timing ISS is a little bit less

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complex first the ethics rules do not restrict receipt of compensation unless

19:35

the writing occurs during government service and second the ethics rules

19:41

generally only restrict receipt of compensation during government service but no receipt of compensation is

19:48

attributable to the time the writing occurs if it's received pursuant to a

19:53

contract so we'll unpack that a little bit coming up next slide please

20:02

so here you can see a graph on receipt of compensation so we'll go over what this

20:08

graph means the bottom line is that first government service second

20:15

compensation and third writing government service compensation and writing must overlap at some point in

20:23

time in order for the compensation related ethics rules to apply it 7even

20:28

the 15% Outsider income limitation which we'll talk about later and The Outsider income ban so on the chart what does

20:35

that mean so if you look at the chart there's the um y AIS is activity and the X AIS is time there's writing

20:43

compensation and government service activities and in order for the rules to

20:48

apply because the rules only apply to employees you must be able to draw one perpendicular line that bcts in time the

20:57

writing the comp compensation and the government's service if that can be done then the rules apply if it cannot be

21:04

done the rules don't apply so if writing compensation in government service if one of these three activities does not

21:11

overlap with the others then the rules don't apply and none of the rules prohibit the receipt of the

21:17

compensation doesn't mean there might be some other rule that would prohibit it but none of these rules that were talking about today would prohibit the

21:23

receipt of compensation however if that line does

21:28

bict in time all three of these activities so writing compensation and government service overlap at one point

21:35

in time that means the rules apply doesn't mean the person can't get compensated it means the rules apply and

21:42

they have to be applied so let's talk about some examples so first as I said none of the

21:50

provisions in section 807 teaching speaking and writing will bar a regular employee or an fge who writes a the book

21:58

before entering government service from receiving compensation for the book while he or she is in government on the

22:05

graph the writing line will end before the government service line

22:11

begins similarly a former employee or an s a former regular employee or an sge

22:17

after leaving government service may enter into an agreement with a publisher to receive compensation for writing a

22:23

book even if the book is related to his are official duties on the graph the

22:29

lines representing writing and compensation will not start until after

22:34

the government service line ends now some writing that occurs during

22:40

government service will not implicate the rules because no compensation is received for the writing so for example

22:46

a regular employee or an sge who writes a book on any topic solely on speculation so they basically write a

22:53

book hoping that someday they'll sign a contract hoping someday someone will pay pay them for this writing but it's not

22:59

occurring while they're in government so they write this book on speculation during government service with no

23:05

agreement to publish it no one's agreeing to pay for it so they write this during government

23:10

service they will not violate any of the provisions of 07 if they get paid after

23:16

they leave and that's because looking again back on the graph the line representing compensation will not start

23:23

until after government service line ends

23:29

now there are some um wrinkles that we'll talk about now for a minute

23:34

however for example um the employee however cannot sign a contract and write

23:40

the book related to his official duties while in government while simply deferring the pocketing of the money of

23:47

the payment until after he or she leaves government so for so what happens let's

23:53

say is that uh you write a book and you sign a contract and the publisher says we'll pay you a

24:00

million dollars but they say we won't actually give you the million dollars until the day after you leave

24:07

government now in this instance this employee will have received compensation

24:13

the minute they sign the contract because the definition of compensation includes the promise to pay under a

24:19

contract that's a form of compensation it's a form of consideration it's a promise for a promise I promise to write

24:26

the book you promise to pay me that promise is compensation so if they sign

24:32

that contract while they're in government they have compensation while in government therefore all three lines in

24:39

the graph will overlap at one point in time and the ethics rules will apply if you look at the graph you'll see that

24:45

compensation line is really long so in this example the person probably signed the contract at an early point in time

24:52

started writing government service at the same time now as long as that contract is in force the the

24:57

compensation line is a solid line through time that's why that line is so long because once the contract is signed

25:04

receipt of compensation is continuous so long as the contract is in effect so why is this the case without

25:13

this it would be too easy to undermine the entire Rule and the purpose for it you could have an employee offered a

25:19

book deal by someone who has business before them and pay them a lot of money

25:25

under the contract but just Del lay it to the day after after they leave um and obviously that would undermine um the

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whole purpose of the rule next slide

25:36

please so the next question is what is the type of compensation different types of

25:43

compensation are treated differently under some of the rules so for book deals the two most common types of

25:49

payment are royalties a percentage of the proceeds from the sale of each book

25:54

paid to the author from the publisher so Royal aren't earned until books are sold in advance an upfront cash payment

26:04

from the publisher to the author that is earned back through future sales so an advance seems appropriately named a

26:11

payment that is made prior to any sales of books however reimbursement for travel

26:18

expenses provided in connection with the teaching speaking the writing are excluded from the definition of

26:23

compensation for regular employees and sges so let's talk about an

26:29

example a regular employee cannot get paid to write a book related to his or her official duties or receive a fee for

26:37

giving a speech about the book but he or she can get travel expenses reimbursed

26:43

to go to and speak about the book so the travel expenses the

26:48

reimbursement are not considered um compensation for regular employees and sges however I do know that um the

26:55

travel expenses would be considered um compensation for cover non-career and Pa

27:00

employees which we'll talk about later next slide

27:06

please so this next slide is very important it's the last question what other ethics rules and considerations

27:12

May apply and the answer is often a lot um here are a lot of other um potential

27:19

um ethics considerations and they're addressed um in the job AIDS that we'll go over in the second portion of this of

27:25

this talk today first are writing related activities what constitutes

27:30

writing is substantive editing writing the answer is yes is proof reading writing the answer is no but there are

27:37

other issues that come up for writing related activities what about supplemental agency

27:44

regulations many agencies have prior approval requirements for employees to engage in outside activities for pay so

27:52

obviously it's important to know whether you know the AG supplemental regulation plays a role in the

27:58

analysis Financial conflicts of interest so once an employee signs a contract

28:03

with a publisher they have uh a financial interest with the publisher and the publisher um the employee is not

28:10

able to work on any particular matter that could affect the uh ability or willingness of the publisher to make

28:15

payments under the contract impartiality concerns once an employee signs with a publisher to pay

28:23

um them for a book um they have a covered relationship with the publisher they've engaging a non-routine um

28:29

consumer transaction um business transaction with the publisher so there are going to be limitations on the

28:34

ability of the employee to work on party matters um where the um publisher is a party or represents a

28:41

party supplementation of salary um if the writing that's being compensated was

28:47

produced as part of the employees job then payment for that and receipt of

28:53

payment for that could be criminal under supplementation of salary statute 18 USC section 209 though I will note that

28:59

although 807 in the standards prohibits it um for sges um 209 does not apply to SG so that

29:07

wouldn't be criminal for SG but it still be prohibited to get paid for work that you promote you produce for the

29:13

government by an outside Source um still be prohibited by 807 and finally misuse of position

29:20

issues come up all the time um the use of official time for a personal activity or the use of official supplies um use

29:26

of title connection with an outside activity um these are issues that come up all the time and the job aid in the

29:33

legal advisory and the citation index is a very helpful reminder and guide on those

29:38

topics next slide please now that we reviewed the six primary questions that

29:44

need to be explored let's review a reference table that you can refer to when a regular employee or an sge comes

29:51

to you asking whether they can get paid for writing a book and the point here you can see from

29:58

the title of this table only use this table once you've determined that the

30:03

employee asking to get paid for writing a book is a regular employee or an sge

30:08

and I'll review um how to use these tables when we discuss the table addressing covered non-career and Pa

30:15

employees but once you're familiar with the table it can be a real timesaver and a great resource for you when an

30:21

employee asks your advice on whether she can get paid for writing a book so when you look at table you will see that the

30:29

headings um talk about when the writing occurs and when the compensation's

30:34

received and then how 807 applies depending on those

30:40

answers so we'll come back to this when we look at a more complicated table that applies to CNC and Pa

30:48

employees next slide please so then here's the citation

30:55

overview this is the first half actually of the citation interview uh citation overview determining whether a regular

31:02

employee or an sge may receive compensation for writing a book in

31:07

addition to reference tables The Advisory opinion also contains these two overviews of various citations the

31:14

statutes regulations and executive orders categorized um by the questions

31:20

that they help to answer so again when you look at the title of this overview

31:25

you should only use this particular C overview once you've determined that the employee is asking to get paid for

31:31

writing a book um and that employee is a regular employee or an sge and again

31:37

I'll review these tables in more in depth when we talk about the CNC and Pa employees I will note however that as

31:44

you can see um it is organized you know one two three the first three questions of the six questions you know what type

31:50

of employee is it related to official duties what is the timing of the work and the receipt of the compensation and

31:56

then there are citations underne underneath each one of them to help provide you um a road map of how to

32:03

answer these questions next slide please and you can see here here are the

32:10

next three questions um around which the legal advisory is oriented um what is

32:16

the type of compensation um who is offering the compensation and why and what are the other considerations and

32:22

this other considerations um citation index is very important because it's a whole of other issues tangentially

32:28

related issues that almost always come up or some subset of them come up when you're giving advice to an employee who

32:34

wants to get paid for writing a book and you here you have one comprehensive source of those types of issues so it's

32:40

an issue spotter as well as the citations of where to look up those answers so now that we reviewed some of

32:47

the um ethics rules as they apply to regular employees and sges let's turn our attention to covered non-career

32:54

employees and employees appointed by the president to a full-time non-career position or PA

33:00

employees many of the issues are similar for these employees and the regular employees and sdes we've just discussed

33:07

so now um we'll focus only on those issues that differ significantly from

33:12

what we've just reviewed next slide please so it is still important of

33:19

course to determine what type of employee you're giving advice to now here the employee will either be a CNC

33:26

employee or a PA employee um but what are those employees who who is a CNC

33:31

employee who is a PA employee now there's several ways in which an employee may qualify as a CNC employee

33:38

under 5 CFR 2636 303a generally there are three primary

33:45

points to remember about a CNC employee a cnc's appointment must be one of

33:51

several types of non-career appointments typically when a position is identified as non-career it refers to

33:58

a political appointment where the appointee can be removed at the will of the appointing official so non-career is

34:04

a political next the covered non-career employee must be covered what does

34:10

covered mean to be covered they must be in a position classified above a gs15 in

34:16

the general schedule or for those positions not under the general schedule they have to be paid a rate of basic pay

34:22

that is at least 120% of the minimum rate of basic pay paid for a

34:28

gs15 so basically they have to be political and they have to have a high up position or rep paid a lot and

34:33

finally they cannot be an sge if a person is an sge if an employee is an sge they are not a CNC

34:41

employee so now let's talk about PA employees generally a PA employee means

34:48

that the employee who is appointed is appointed by the president to a full-time position there are three

34:53

primary points to remember about PA employees first the employee must be appointed by the president second the

35:01

employee must be full-time so it can't be an sge and third the employee must not be

35:07

excluded from coverage and there are certain exclusions for certain low-level presidential appointees usually below a

35:14

GS um level 9ine so different rules apply to CNC and

35:20

Pa employees versus regular employees and sges there are four major differences in

35:27

how and what ethics rules apply to CNC and Pa employees versus the other

35:32

employees however you need to keep in mind that these rules apply in the

35:38

alternative so what does that mean in other words when an employee is subject to more than one rule the rule that is

35:45

the most restrictive will govern and I'll give examples shortly so four major ways the rules

35:51

differ for these employees the first major way in which the rules differ for CNC and PA employees is in the

35:58

definition of related to official duties under Section 807 the definition

36:03

of related to official duties is broader for CNC employees than for regular

36:08

employees and sges so when you think about it a person an employee cannot get paid for writing

36:14

a book that relates to their official duties if a CNC employees has more topics that relate to their official

36:21

duties that means they can get paid for less of their writing so as a result it'll be more difficult for a CNC

36:27

employee to accept payment for writing a book versus a regular employee or an

36:33

sge second major way in which the rules differ for CNC employees concerns the ability of a CNC employee to earn income

36:41

from a source outside the government a CNC employee may not in any calendar

36:47

year have outside earned income attributable to that year which exceeds 15% of the annual rate of basic pay for

36:54

an El level two so an El level to um currently can make $212,100 and 15% of

37:02

that is $1,815 and this limitation is contained in the ethics and Government Act Now

37:09

what this means is that no matter whether they can receive payment for their outside writing it cannot exceed

37:16

this amount so if it's permissible to receive a payment it's capped at this amount regular employees and sges have

37:23

no cap if the compensation is permissible so you might see a theme Here the CNC and Pa employees generally

37:30

are subject to more restrictive rules because they are higher up in the government and the potential appearance

37:36

for corruption is greater they have more restrictions on their ability to engage in outside writing and get paid for it

37:43

in fact they have greater restrictions on their ability to receive outside payment period now one important thing to

37:50

remember a CNC employee who writes on a topic related to his or her official

37:55

duties as defined 807 may not receive any earned income or compensation for

38:00

the writing therefore the rules and how to a portion payments for writing under the

38:06

15% limitation apply to CNC employee only if the writing is not related to

38:12

his or her duties this is an example of how the ethics rules apply in the alternative

38:19

and the more restrictive rules of 807 govern so they have the outset and income limitation and 807 both apply to

38:26

this employee which everyone restricts more is what governs so let's take an example let's

38:33

say you have a CNC employee at Nasa and that employee writes a book about space travel now in theory um a CNC employee

38:42

can receive up to $31,800 of earned income in a calendar year for writing

38:47

that book now if that book is not related to their official duties they can get

38:54

$31,800 7 if that book is related their official duties even though the outset

38:59

income limitation allows payment up to 31815 if it book relates to their

39:05

official duties 807 will not allow that employee to receive any income for that

39:12

book now the third major way in which the rules differ for PA employees

39:17

concerns the ability of a PA employee to earn income from a source outside the government PA employees may not receive

39:23

any outside earned income for activities performed during their government service and this ban this outside earned

39:31

income ban is contained in executive order 12674 is modified by

39:38

12731 the fourth major way in which the rules differ for CNC and Pa employees

39:43

concerned as a definition of compensation or earned income so under the 15% limitation and

39:52

under the outset or income ban royalties are not considered comp compensation or

39:57

earned income royalties are more are considered more akin to um stream of

40:04

revenue from an intellectual property which is more like investment income and

40:09

less like earned income so therefore ban and the 15% limitation do not apply to

40:17

royalties therefore a CNC employee or a PA employee are allowed to receive an

40:22

unlimited amount of royalties for writing a book so long as the book is not related to their official duties

40:28

remember 807 still applies and we prohibit this so if they wrote a book on

40:33

stamp collecting for instance and it was not related to their official duties and they only got royalties they could get

40:39

the unlimited amount of royalties if they were to get in advance they couldn't take the advance because that

40:44

would be prohibited um under the outset income limitation or ban they could get up to 15% of an e

40:52

level two if they were a CNC employee however if that that book happen to be

40:57

related to their official duties even though the ban and the 15% limitation don't apply to royalties they still

41:04

couldn't get any of the royalties because 807 would prohibit it if it relates to their official

41:10

duties next slide

41:16

please so this is the table that you'll use you can see by the heading of the table this

41:21

is the table you would use once you've determined that the employee you're advising um for writing a book is a CNC

41:29

or a PA employee so let's um take a look at this table we'll walk through it for a minute

41:36

so you can see that there's the headings there's the timing of the writing the timing of the

41:42

compensation then the application of 807 the application of the out income ban to PA employees and the application of 15%

41:50

limitation to CNC employees so let's look at the first row

41:57

it's the first row below the headings where it says before government service so if the writing occurs before government service and the compensation

42:04

is received before government service so they wrote the book before they came in they got paid before they came in then

42:09

under 807 compensation is permitted because on that graph that we looked at earlier the um writing and compensation

42:17

lines would end before government service begins under the outed income

42:22

ban compensations permitted under the 15% limit a that compensation would not

42:28

count toward the 15% limit because the rules don't apply so now let's take a look at the

42:36

sixth row below the headings and that's the third row of the during government

42:42

service writing the bottom one during government service if the writing occurs during government

42:48

service and the compensations received after government service now I'll talk about what these asterisks mean you

42:54

can't see them on this slide but they are the asterisks do have are attached to a footnote in the actual legal

43:00

advisory but this all assumes that the writing is done pursuant to a governmental pursuant to a contract so

43:07

the person has a contract to write the book so they write the book during um

43:12

and they have a contract they get paid after under 807 that compensation is barred if it's

43:19

related to the official duties because they received compensation the contract during

43:25

government service service so you have the writing during government service the compensation during government

43:31

service even though it's paid after and you have the contract so under 807 related to official duties um the

43:37

compensation is barred and if that's the case under 807 you don't even need to continue looking

43:44

at the next columns because you're already done you know that that PA and CNC employee cannot receive the

43:51

compensation so that's it well if the relate if the writing does not relate to

43:57

their official duties and the compensation is permitted under 807 so it's permitted under 807 you then want

44:03

to figure out well what about the ban what about the outsider income limitation well under the outsider

44:09

income ban for PA employees the advance would be barred in the situation but royalties were allowed and for CNC

44:16

employees under the 15% limitation the advance will count towards their 15%

44:22

$31,000 limit but the royalties don't count towards the limit because they're not considered compensation for the

44:31

ban or the 15% limit so now let's take a look at the

44:37

citation overview next slide please so this is the first half of the

44:45

citation overview and you can see from the heading this is a citation overview that applies determining whether a CNC

44:51

employee or a PA employee may receive compensation for writing a book book so you would use this citation overview

44:58

once you've determined that the employee seeking advice is a CNC or PA employee so let's talk about this

45:05

overview for a minute you know I really think that you know the tables that we just went over and the citation

45:12

overviews are again tremendous job AIDS that you can jump to and might answer any particular question you have of

45:18

course the whole legal advisory is instructive but these job AIDS you know can really provide a great um shortcut

45:24

to getting to the answer that you need when you're trying to provide advice to an employee who wants to get paid for

45:30

writing a book so here again there are the six questions that the legal advisory um is organized around um what

45:38

category of employee is the book related to official duties when is the writing performed and compensation received so

45:44

what you have is you have the citations um that go to answering these questions and there's even a little bit

45:51

very little bit of an explanation um in these um in in this overview um giving

45:58

you a clue as to what the answer actually is or what these citations say if that's not sufficient then of course

46:04

then you go to the citation but for example under the third one when is the writing performed and compensation

46:11

received so here you would want to know the definition you received and um what

46:18

applies to each employee and so here it tells you which rules apply to which

46:24

employee cncn PA CA only PA only and then it even gives a little bit of a

46:29

clue here it says under all these Provisions receipt of compensation is usually attributable to the time the

46:34

writing occurs unless written solely on speculation during government service so

46:40

that was the point we made before that if you write um and you have a

46:48

contract then and you write during government service and you have a contract to do that writing and then the

46:54

person gets paid after they leave government that payment after government is attributable to the time the writing

47:00

occurred during government and is received the consideration under the contract is received when they are a

47:06

government employee and now this gets back to the asterisks that were on the previous table it says unless written solely on

47:14

speculation during government service so if the person the employee writes the book during government service does not

47:21

have a contract to write it does not have any promise or legally binding um

47:26

agreement to pay for it they just write the book and they hope to get paid later they leave Government after writing this

47:33

book solely on speculation and then after they leave they sign a contract to get paid for it at that

47:39

point the um compensation is not attributable to the time the writing occurred because

47:46

there was no compensation concurrent with the writing at that point when it's written on speculation the employees

47:53

writing and government service overlap but the compensation didn't start until after they left government because they had no contract

48:00

and no agreement to pay for the writing while they were in government um next slide

48:08

please and so here are the last three questions um what is the type of compensation who is offering the

48:15

compensation and why and other considerations again just tremendous um

48:22

you know identification of the variety of topics for you um that might come up um compensation

48:29

for writing related activities supplemental agency regulations public office for private gain um conflicting

48:36

outside employment and activities so it's really kind of a popere of issue spotting for you as an Ethics official

48:42

as well as giving you the citations necessary to refer to when trying to answer a question that involves one of

48:49

these um variety of issues that's likely to come up when you're giving advice on book

48:54

deals so these job AIDS the citation overviews

49:01

that are contained in the legal advisory of course are designed to um be self-contained and to answer your

49:07

questions next slide please however um obviously um there

49:13

will be times when you will have follow-up questions or questions that are not answered um in the advisory so

49:20

um if you're an employee looking for advice and have questions um please feel free to contact UM the ethics official

49:27

at your agency and if you are an agency ethics official with questions um please feel free to contact uh e OG desk

49:35

officer uh thank you very much for listening and I certainly hope this presentation has been helpful thanks

49:43

again

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