



United States
Office of Government Ethics
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DO-08-012

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick
Director

SUBJECT: Application of the multiple presentations exception in 5 C.F.R. § 2635.807(a)(3)(ii) to courses offered by Non-Appropriated Fund Instrumentalities (NAFIs)

The Office of Government Ethics (OGE) is issuing this memorandum to provide ethics officials with guidance on whether an executive branch employee may accept compensation for teaching a course offered by a NAFI under the exception at 5 C.F.R. § 2635.807(a)(3)(ii) in the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct). In short, an employee may accept such compensation because the term "sponsored and funded by the Federal Government" in this exception encompasses courses of instruction offered and funded by NAFIs.

Employees generally are not permitted to accept compensation for teaching, speaking and writing if the activity relates to their official duties. However, the Standards of Conduct provide some exceptions to this general prohibition for teaching certain courses of instruction. Specifically, 5 C.F.R. § 2635.807(a)(3)(ii) in the Standards of Conduct provides, in relevant parts, that:

Notwithstanding that the activity would relate to his official duties under paragraphs (a)(2)(i)(B) or (E) . . . an employee may accept compensation for teaching a course requiring

multiple presentations by the employee if the course is offered as part of:

(i)

(ii) A program of education or training sponsored and funded by the Federal Government or by a State or local government [underscoring added]"

In recent years, we have been asked whether a course of instruction involving multiple presentations provided by a NAFI is a program of education or training that is "sponsored and funded by the Federal Government," as described in this exception.

In general, a NAFI is a Federal instrumentality that performs activities that are essential to Government functions. See Standard Oil Co. v. Johnson, 316 U.S. 481, 485, 86 L.Ed. 1611, 62 S.Ct. 1168 (1942) (characterizing NAFIs as "arms of the [Federal] Government"); Lion Raisins, Inc. and Lion Bros. v. United States, 416 F.3rd 1356, 1363 (2005) ("NAFIs are agents of the United States."). NAFIs do not receive their funding by Congressional appropriation. They instead derive their non-appropriated funding primarily from their own activities, services, and product sales. The USDA Graduate School, Army and Air Force Exchange Service, and the Navy Exchange Service Command are some common examples of Federal entities that are NAFIs.

For purposes of applying our exception at 5 C.F.R. § 2635.807(a)(3)(ii), OGE has decided that programs of education or training that are provided by NAFIs are included in the phrase "sponsored and funded by the Federal Government." Accordingly, under the above exception, an employee may accept compensation for teaching a course of instruction involving multiple presentations that is part of a program of education or training sponsored and funded by a NAFI.

If you have any questions, please contact Vince Salamone, Associate General Counsel, at 202-482-9274.