

GAO

Report to the Chairman, Subcommittee
on Investigations and Oversight,
Committee on Science, Space, and
Technology, House of Representatives

October 1992

NATIONAL SCIENCE FOUNDATION

Better Guidance on Employee Book Writing Could Help Avoid Ethics Problems



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General Government Division

B-248671

October 9, 1992

The Honorable Howard Wolpe
Chairman, Subcommittee on Investigations and Oversight
Committee on Science, Space, and Technology
House of Representatives

Dear Mr. Chairman:

Your letter of December 13, 1991, requested that we review the National Science Foundation's (NSF) practices regarding conflict-of-interest issues. More specifically, in meetings with the Subcommittee on January 29 and March 20, 1992, we agreed to determine (1) whether NSF and two of its employees complied with applicable laws and regulations when preparing and publishing Rush to Policy and The Practice of Policy Analysis and (2) whether NSF has adequate policies and procedures to protect against violations of laws and regulations applicable in such situations.

Approach

To accomplish these two objectives, we interviewed NSF employees who prepared the two books in question and NSF officials who advised the employees on their book-writing and publishing activities. We compared related actions by NSF and the employees with laws and regulations on (1) standards of ethical conduct, (2) the use of federal appropriations, and (3) printing and copyright of government information. We determined whether NSF had incorporated relevant governmentwide criteria on employees' writing and publishing activities into NSF policies, procedures, and practices. In addition, we compared NSF's policies and procedures with those of four other science-related agencies.¹ (See app. I for a more detailed statement of our objectives, scope, and methodology.)

Results in Brief

Writing and publishing activities of federal employees may be done as either (1) official governmental duties or (2) outside (i.e., unofficial) activities. Different federal laws and regulations apply to each. Therefore, to help ensure that employees comply with applicable requirements, agencies must clearly establish and communicate to employees whether agencies consider writing and publishing as official duties or outside activities.

¹The four agencies were the National Aeronautics and Space Administration (NASA), the National Institutes of Health (NIH), the National Institute of Standards and Technology (NIST), and the United States Geological Survey (USGS). NIH is part of the Department of Health and Human Services (HHS); NIST is part of the Department of Commerce; and USGS is part of the Department of the Interior.

The two NSF employees who wrote and published Rush to Policy and The Practice of Policy Analysis did so without a clear determination by NSF as to whether the employees were engaging in official NSF duties or outside activities. The employees prepared the books, in part, during official work hours, using government secretarial support and computers. However, NSF allowed the employees to publish the books as private individuals through commercial publishers. Had NSF determined that the books were being prepared as outside activities, the employees would not have been permitted by executive branch ethics regulations to use those government resources. Or had NSF determined that the books were being prepared as part of the employees' official duties, NSF should have reviewed the contents of the books and arranged for their publication according to related federal laws and regulations. However, NSF did not establish whether these activities were official or unofficial or take other steps to ensure that the employees complied with laws and regulations applicable to them.

We believe that this situation occurred because NSF had no formal policies and procedures for reviewing employees' job-related writing and publishing activities, determining whether these activities were official or unofficial, and advising employees accordingly. The other science-related agencies we visited had such policies and procedures. We believe that NSF needs policies and procedures for reviewing these activities to ensure compliance with federal requirements.

Background

NSF has broad authority for determining what book-writing and publishing activities its employees, as part of their official duties, may undertake as necessary and appropriate to accomplish NSF's mission. Furthermore, employees may, under appropriate circumstances, engage in book writing and seek publication as outside, personal activities. However, such activities are subject to different statutory and regulatory requirements depending on whether they are considered official duties or outside activities. For example, agencies and their employees are subject to laws governing the use of private publishers to publish government materials prepared as part of an employee's official duties. However, books prepared as outside activities are not subject to such laws. Additionally, when books are prepared as part of an employee's official duties, agencies need to concern themselves with provisions of federal copyright law (17 U.S.C. 105) that deny copyright protection to private publishers for any

work of the U.S. government.² On the other hand, works prepared as outside activities may be subject to copyright protection.

In addition to the laws mentioned earlier, ethics laws and regulations govern employees' information-dissemination activities both on and off the job. For example, a conflict-of-interest statute (18 U.S.C. 209) prohibits federal employees from supplementing their salaries (i.e., receiving payment both from the government and a source outside the government for a service performed as an official duty). Executive branch standard-of-conduct regulations prohibit compensation to employees from any source other than the government for writing that focuses specifically on the agency's responsibilities, policies, and programs. However, employees who engage in book writing as an outside activity may, under certain circumstances, be able to accept compensation. The standard-of-conduct regulations include further restrictions, such as limiting employees' use of government time and property to official duties or authorized activities and disallowing the use of nonpublic government information, which includes information that has not been and is not authorized to be disseminated to the general public.

Federal agencies, including NSF, have a responsibility under the Ethics in Government Act of 1978 and ethics regulations to help employees comply with federal laws and regulations. Agencies are to do this by, among other things, reviewing employees' outside financial interests and working with employees to avoid conflicts of interest and potential ethics violations.

At NSF, the Office of General Counsel (OGC) is responsible for administering the agency's ethics program and advising employees on various legal matters, such as compliance with publishing and copyright laws. Within OGC, an intellectual property specialist provides advice to employees on book writing and publication, such as ownership of material in books written by NSF employees.

²Copyright protection over the materials in books is asserted as a right by a private publisher when the publisher places a copyright notice in the book precluding other persons from using the materials without the publisher's permission. The rationale behind a prohibition on copyright protection over materials in the book produced by government work is that because funds provided by the U.S. public through taxes have been used to produce the materials, the materials should be free for public use without copyright restrictions.

NSF Did Not Adequately Advise Employees on Book Writing and Publishing

Two NSF employees (a division director and a subordinate, a senior technical analyst) co-authored and arranged for the publication of Rush to Policy in 1988 and The Practice of Policy Analysis in 1991. Although not required to do so by NSF policy, the employees sought and received advice from several NSF officials regarding their activities. Information on the employees' writing and publishing activities, including NSF's advice to the employees concerning both books, follows.

Rush to Policy

In 1984, the division director advised NSF officials that he and his colleagues had prepared a manuscript—mostly on the authors' own time—but had included information in the manuscript that was prepared as part of their official duties. The division director requested approval for private publication of the manuscript. The division director's supervisor signed the memorandum indicating approval and NSF's General Counsel signed it as concurring. However, these officials did not indicate on the memorandum—or in other NSF records that we reviewed—whether the writing of the book was considered an official NSF responsibility or an outside activity.

In 1986, an intellectual property specialist, in a memorandum to the division director, said that a draft of NSF procedures on employee writing would authorize division directors to approve their employees' use of government time, materials, and services in preparing publications and that this director could assume he could approve this writing project. However, NSF did not clearly advise the division director on how information in the book should be treated under federal copyright law. Specifically, in the 1986 memorandum, the intellectual property specialist suggested that he and the director could meet and determine if or how the "copyrightability" of the proposed book could be preserved. The specialist did not, in our view, clearly guide the director by adding in the memorandum that:

"Unless the publisher is anxious to have copyright in the proposed book, however, it would be easier, and safer, to assume that it will be a 'work of the United States Government.'"

In 1988, a private firm, Transaction Inc., published the book entitled Rush to Policy, and the NSF division director and his subordinate, the senior technical analyst, were listed as authors. The employees provided us with a copy of an agreement they entered into with the publisher, which states that all information in the book is solely owned by the authors. In addition, the book contains a statement that the copyright belongs to the publisher. The intellectual property specialist said that he and the director had not

met, although he had suggested a meeting in the 1986 memorandum, to discuss the copyright question.

The Practice of Policy Analysis

After publishing Rush to Policy, the same two employees in 1989 requested NSF advice on publishing another book. In this instance, NSF records show that the NSF intellectual property specialist advised the division director and the senior technical analyst on a draft of a publishing contract between the two employees and a private publisher. The specialist emphasized in a memorandum to the employees that they would not be signing the contract as NSF representatives. He also advised them that the book should have a disclaimer of any NSF responsibility for the contents of the book. No mention was made in the memorandum of how the employees or NSF would deal with the copyright question, but the publishing contract does state that the work was an account of activities sponsored by the U.S. government. In 1991, the book was published as The Practice of Policy Analysis by Howell House Incorporated, with the two NSF employees listed as authors. The copyright notice does not recognize the book as a work of the U.S. government.

According to the NSF division director, NSF records do not indicate whether the employees used government time and property to prepare the second book; however, the division director said that he approved the use of government time for the senior technical analyst and the division director's secretary to work on this book. The technical analyst estimated that he, the director, and the secretary spent a total of 15 to 20 days of government time on the book over a 2-year period. In addition, the technical analyst and the secretary said that some use was made of government computers and photocopying machines.

A Clear NSF Determination Was Needed

NSF had both the authority and responsibility to determine whether the book-related activities were official NSF duties or outside activities, but NSF did not clearly determine how the activities were to be classified. We believe NSF needed to make this determination because, if the books were written as part of the employees' duties, NSF should have formally reviewed the manuscript and arranged for publication of the manuscripts with the private publishers. NSF's basic statutory authority (42 U.S.C. 1870) authorizes NSF to publish or arrange for the publication of scientific and engineering information without regard to provisions in 44 U.S.C. 501, which generally requires that official government publishing be done at the Government Printing Office (GPO).

We do not believe that this authority permits the use of government resources for the publication of books under agreements between NSF employees, as private individuals, and private publishers. Rather, we believe that the provisions authorize NSF to arrange with sources other than GPO for the publication of agency documents under applicable procurement requirements. However, as stated previously, the employees were advised to make arrangements as individuals with private firms for publishing the books. Had NSF formally reviewed the manuscripts, it could have ensured that the manuscripts were consistent with NSF policies, such as assuring that information in the book was appropriate for release and that publication standards were met. Had NSF contracted for the publication of the books, it could have assured that no commercial organization received inappropriate preferential treatment and that copyright restrictions were clearly identified.

Conversely, if the books were outside activities, the NSF employees would have been prohibited by federal ethics regulations from using government resources in preparing the books. Federal ethics regulations (5 C.F.R. 735) specify that a government employee may not use government property for other than authorized purposes. These regulations, as well as some recently issued by the Office of Government Ethics (OGE), prohibit the use of public office for private gain, such as using a public office to induce another person, including a subordinate, to provide a benefit to the employee in such an office. Moreover, the division director's acknowledged use of subordinates in preparing both books would, according to OGE officials, raise questions concerning improper gifts to a superior as well as impartiality in performing official duties. Finally, OGE officials raised concerns that directing a subordinate to perform services for a supervisor's outside activities could be viewed as acts affecting the supervisor's personal financial interest implicating 18 U.S.C. 208 (a).

Thus, because of the way NSF treated these book-related activities, we do not believe that it adequately ensured compliance with relevant law and regulations. If these activities were considered official duties, NSF should have formally reviewed the manuscripts and arranged for their publication according to its publication authority under 42 U.S.C. 1870. If they were outside activities, the employees' use of government resources would have been a violation of federal ethics regulations. We did not, however, find evidence of a violation of federal conflict-of-interest statutes, such as the statute prohibiting supplementation of salary (18 U.S.C. 209). The employees prepared and processed portions of the books on government time, and their publishing agreements stated that they were to receive a

total of 30 free copies of 1 book and 40 free copies of the other. However, OGE has said that free books do not constitute compensation. Furthermore, the employees' agreements said they were not to receive any royalties as compensation for their efforts, and both employees said they had received none.

NSF Needs a Formal Policy and Procedures for Reviewing Book-Writing Activities

We believe that NSF's treatment of employees' book-writing activities indicates a need for NSF to adequately review NSF-related writing before employees begin such activities and to clearly advise employees on how to proceed with them. NSF had not formalized its policy for making such reviews and advising employees.

NSF did not require employees to seek agency advice or approval before beginning book-writing activities but did have a policy and procedures requiring that NSF approve its publications and prescribing steps for printing, distribution, and storage of such publications. However, the policy did not cover "publications done by individual staff members and not necessarily endorsed by NSF." Thus, the policy did not cover the two books discussed earlier because NSF did not endorse the contents of the books. Specifically, both books contained disclaimers of NSF responsibility or liability for information contained in them.

NSF policy also allowed certain employees to do book-related activities as "independent research" under an NSF-approved plan and subject to time limitations. However, NSF officials said the two books discussed earlier were not authorized or done as independent research projects under this NSF policy.

Although NSF did not require employees to seek advice on their book-writing activities, we found that some employees had obtained such NSF guidance. Some other employees prepared and published books without obtaining NSF guidance or receiving supervisory approval of their activities. In addition to the 2 employees discussed earlier, we found 9 individuals who were either employed by NSF or on detail to NSF from other organizations who published 13 books while at NSF. We interviewed all nine individuals, and only two said that they had sought NSF ethics advice on their activities. Seven had not. (See table 1.)

Table 1: Books Written by NSF Employees and Privately Published During January 1986 Through February 1992

Employee ^a /grade	No. of books	Written while at NSF ^b		Copyright by private publisher		OGC advice given to employee	
		Yes	No	Yes	No	Yes	No
A/SES ^c	1	Yes		Yes		Yes	
B/GS-15 ^c	1	Yes		Yes			
C/SES	3	Yes ^d		Yes		Yes	
D/GS-15	1	Yes		Yes		Yes ^f	
	1 ^e	Yes		Yes			No
E/GS-15	1	Yes ^d		Yes		Yes	No
F/IPA ^g	2	Yes ^d		Yes			No
G/AD ^g	1		No	Yes			No
H/AD ^g	1		No	Yes			No
I/AD ^g	1		No	Yes			No
J/AD ^g	1		No	Yes			No
K/IPA ^g	1		No	Yes			No

^aThe employees mentioned in this table include the NSF division director and senior technical advisor as well as the 9 individuals who published 13 books and either were employed by NSF or on detail to NSF from other organizations.

^bAll book(s) were published during the employees' tenure at NSF. Except for employees A and B, employees C through F, who had written their books while employed at NSF, said they did not use government time or resources in these activities.

^cJoint authors of both books.

^dThese authors updated previously published books.

^eThe NSF employee said he wrote 2 chapters of this 11-chapter book and that the chapters contained NSF information that was publicly available. The other chapters were written by three non-NSF employees, and the book was edited by a non-NSF employee.

^fThe employee said that he received advice from an OGC official, but the official does not recall giving advice.

^gAD is the acronym for the term "administratively determined," referring to the selection process for personnel hired under temporary appointments and International Personnel Act of 1979 (IPA).

NSF had not determined how or whether most of the books related to NSF's mission and responsibilities and had not advised employees on complying with federal laws and regulations. As indicated in table 1, five of the nine individuals worked on the books before coming to NSF but published the books while employed by NSF. None of the five employees said that they had requested NSF advice on publishing the books outside the government. As a result, NSF did not have the opportunity to (1) review the manuscripts to determine if the employees complied with restrictions on use of

government information, if any, in the books and (2) advise the employees of restrictions on using NSF time to promote their books and using their NSF position titles in the books. We believe that NSF needs to review such book-related activities before employees begin them and then provide employees with clear and complete guidance on them.

Other Science Agencies Had Formal Review Policies

Unlike NSF, the other agencies we contacted (NASA, NIH, NIST, and USGS) all required employees to obtain prior agency approval of their writing and some other information-dissemination activities. As table 2 shows, these agencies had specific requirements for agency reviews of such activities.

Table 2: Agency Policies and Procedures Concerning Employee Book Writing and Publishing

Questions	NSF	USGS	NIH	NIST	NASA
Is prior written approval required for book writing?	No	Yes	Yes	Yes	Yes
Is there a requirement to distinguish between official/nonofficial duties?	No	Yes	Yes	Yes	Yes
Is there written policy to decide whether books should be published by GPO or by a private publisher?	No	Yes	Yes	Yes	Yes
Is there written policy on employee and publisher right to copyright book contents?	No	Yes	No	Yes	Yes
Is there written policy describing whether compensation is allowed for employee writing?	Yes	Yes	Yes	Yes	Yes

As can be seen in table 2, all four agencies required a determination to be made as to whether employees' proposed activities were considered outside activities or official duties. Two of the four agencies (NIH and NIST) had forms (see app. II and III) for reviewing and approving employees' proposed activities, in which employees were to describe those activities. For example, the NIST form required employees to answer over 20 questions to assist the agency in determining whether activities were official duties or outside activities.

All four agencies also had written policies for deciding whether employees' written products should be published by the government or a private publisher. Three of the four agencies had written policies covering whether and how a publisher must limit the claim of copyright for private publications. For example, USGS developed a form (see app. IV) in which private publishers were to acknowledge copyright limitations when government information was used. NIST requires that official writings

submitted for non-NIST publication are to include a statement that the material is in the public domain and not subject to copyright. For this caveat, NIST suggested the language, "Official contribution of the National Institute of Standards and Technology; not subject to copyright in the United States."

In addition, NIST and NASA had provided for publishers and the agencies to share the royalties when the agencies approved the use of outside publishers to disseminate agency-related information. NIST policy permits employees to accept payment for NIST official book writing, with the checks payable to the agency. NASA provided an example to illustrate its policy: a publisher was to pay royalties to NASA, provide NASA with courtesy copies of the work, and give NASA the right to purchase additional copies at a discount of 40 percent of the retail price. NASA officials said that royalty payments to NASA are forwarded to the U.S. Treasury.

We recently reported that some other agencies used their review processes to help employees avoid ethics problems.³ For example, 5 of the 11 agencies that we reviewed in that report, including some science-related agencies, were presented with issues involving employees' speaking, consulting, and writing activities when such activities were related to the agencies' missions and responsibilities. These issues, we concluded, could be addressed through prior approval requirements and adequate agency review using appropriate criteria. NSF has no procedures to address such issues systematically before employee work-related activities begin.

NSF Has Begun Formalizing Its Policy

In June 1992, NSF's General Counsel said that NSF had not clearly written and communicated a policy on such employee activities. The General Counsel said that the NSF practices had never been questioned. In addition, he said that the Director of NSF determined a policy should be implemented and that NSF was in the process of formalizing such a policy.

The General Counsel also said that the writing and private publication of Rush to Policy and The Practice of Policy Analysis could be considered to be both official duties and outside activities. According to the General Counsel, those parts of the employees' work done on government time with management approval were definitely official duties. The General Counsel also said that he could characterize work done on the employees'

³Employee Conduct Standards: Some Outside Activities Present Conflicts of Interest (GAO/GGD-92-34, Feb. 10, 1992).

own time as outside activities or as a continuation of official duties done outside regular duty hours. He believed that the way NSF characterizes the activities may make little practical difference. We disagree, however, and believe that a clear determination by NSF that such activities are either official duties or outside activities is necessary to help ensure that NSF and its employees comply with applicable laws or regulations.

Conclusions

NSF did not adequately review and guide NSF employees' activities in writing and publishing Rush to Policy and The Practice of Policy Analysis. Specifically, NSF ethics officials did not clearly determine whether the book projects were official NSF responsibilities or outside activities. As a result, NSF did not ensure that the books were written and published according to federal requirements, thereby exposing the agency and its employees to possible statutory and regulatory violations.

NSF needs policies and procedures for systematically advising employees on book-writing and publishing activities that relate to NSF's responsibilities. Such policies could reduce the risk to NSF and its employees of ethics and other violations.

Recommendation

We recommend that the Director of NSF formalize and implement policies and procedures to require (1) adequate prior review of employees' NSF-related book-writing and publishing activities and (2) appropriate actions, including providing clear advice to employees to help ensure that such activities comply with applicable laws and regulations.

NSF and OGE Comments

NSF's comments on the contents of this report were expressed in a letter to us. (See appendix V.) NSF did not question the facts of the report and agreed with our recommendation. In the letter, NSF's General Counsel said the reason NSF does not have a policy on book writing is that few books have been written at NSF. The General Counsel further said that NSF has completed a first draft of a written policy to implement our recommendation. NSF raised several questions about the details of implementing new policies that we will address separately. OGE generally agreed with information in the report and its specific comments are on page 6 of the report.

As agreed with the Subcommittee, we plan no further distribution of this report until 30 days from the date of this letter or until it is released by the Subcommittee. At that time, we will provide copies to the appropriate congressional committees and subcommittees and the Directors of NSF and OGE. We will also provide copies of the report to other parties upon request.

If you have any questions regarding this report, please call me at (202) 275-5074. The major contributors to this report are listed in appendix VI.

Sincerely yours,



Bernard L. Ungar
Director, Federal Human Resource
Management Issues

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Abbreviations

AD	Administratively Determined
CFR	Code of Federal Regulations
GM	General Management
GPO	Government Printing Office
GS	General Schedule
HHS	Department of Health and Human Services
IPA	Intergovernmental Personnel Act
NASA	National Aeronautics and Space Administration
NIH	National Institutes of Health
NIST	National Institute of Standards and Technology
NSF	National Science Foundation
OGC	Office of General Counsel
OGE	Office of Government Ethics
SES	Senior Executive Service
USC	United States Code
USGS	United States Geological Survey

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Objectives, Scope, and Methodology

As requested by the Chairman of the House Subcommittee on Investigations and Oversight, Committee on Science, Space, and Technology, we (1) assessed the adequacy of NSF's policies and procedures affecting its employees' activities in writing books and publishing them using private publishers and (2) determined whether two NSF employees complied with federal laws and regulations in writing and publishing two books.

To assess NSF's policies and procedures, we reviewed laws on its mission and appropriations as well as NSF policies, procedures, and practices on writing and publishing books. We also analyzed governmentwide laws and regulations, which provide criteria for addressing ethics, appropriations, copyright, and printing issues, including (1) conflict-of-interest statutes (18 U.S.C. 202-209); (2) federal ethics regulations (5 C.F.R. 735); (3) standards-of-conduct regulations proposed by OGE in July 1991 and issued in final form in August 1992; (4) the Federal Personnel Manual, addressing use of official time and funds for employee professional activities; and (5) 17 U.S.C. 101, 105, and 403, concerning the availability of a copyright to government material by private publishers. We reviewed NSF guidance to agency employees in memoranda and opinions affecting writing and publishing books.

We compared policies, procedures, and guidance of four other agencies covering these activities with those of NSF. These policies and procedures are documented in (1) NASA, NIH, NIST, and USGS instructions and forms that are for the agencies' prior approval of employee outside activities and that distinguish between official duties and outside activities; (2) a Department of Commerce order (No. 219-1) that addresses outside writing and determines whether the writing is to be made publicly available through Commerce or private publishers; (3) a 1982 NASA memorandum that addressed copyright ownership by government employees and private organizations in documents produced by agency employees, at least in part, as official duties; and (4) a Department of the Interior manual that, in part, addresses outside publications.

We assessed NSF practices for reviewing and approving the book writing and publishing activities of nine NSF employees or detailees, in addition to the two employees who wrote Rush to Policy and The Practice of Policy Analysis. The 9 individuals produced a total of 13 books from January 1986 to February 1992. To identify these individuals, we determined which books were published by full-time Senior Executive Service (SES) employees, General Schedule (GS) grade 15 (or equivalent-level)

employees, or detailees to NSF during the period stated earlier. We interviewed these individuals concerning any guidance they received from NSF ethics and supervisory officials. We interviewed OGE officials and ethics officials from Commerce, Interior, NASA, NIH, NIST, and USGS who were responsible for giving advice or granting approvals on book writing and publication or ethics matters, to help determine the adequacy of NSF practices.

To determine whether the two employees identified by the Subcommittee complied with requirements, we used information obtained for our first objective to determine which laws and regulations applied to government employees' activities concerning the writing and publishing of these employees' books. In addition, we also interviewed the following individuals and reviewed documentation they provided:

- the two NSF employees who wrote Rush to Policy and The Practice of Policy Analysis, another NSF employee who worked on the second book, and the publisher of the second book;
- the NSF General Counsel and the intellectual property specialist who gave advice to employees on book writing and the use of private publishers; and
- the NSF supervisor who had information on the writing of the second book.

Our review of documents included reviews of parts of the books, memoranda of advice and approval, and publishing contracts for the books.

We discussed this report with NSF and OGE officials and have incorporated their comments, as appropriate, in the report. Our review, made during the period January 1992 through July 1992, followed generally accepted government auditing standards.

HHS/NIH Forms and Instructions for Requesting Approval for Writing Activities and Distinguishing Between Outside Activities and Official Duties

Figure II.1: HHS Request for Approval of Outside Activity (Form HHS 520)

REQUEST FOR APPROVAL OF OUTSIDE ACTIVITY*		<input type="checkbox"/> Initial request <input type="checkbox"/> Renewed Request <input type="checkbox"/> Renewal	
(Ref.: HHS Standards of Conduct Regulations)			
1. NAME (Last, First, Initial)		2. ORGANIZATIONAL LOCATION (Operating Division, Bureau, Division)	
3. TITLE OF POSITION		4. GRADE AND SALARY (Federal)	
*5. NAME, ADDRESS AND BUSINESS OF PERSON OR ORGANIZATION FOR WHOM OUTSIDE SERVICES WILL BE PERFORMED		6. LOCATION WHERE SERVICES WILL BE PERFORMED	
7. NATURE OF ACTIVITY (Indicate type of activity, e.g., teaching, consultative services, and give full description of specific duties or services to be performed. Specify, when possible, the scheduled days of week and hours of day proposed activity will be performed.)			
8. ESTIMATED TIME INVOLVED			
a. PERIOD COVERED		b. ESTIMATED TOTAL TIME DEVOTED TO ACTIVITY (If on a continuing basis, give estimated time per year)	
FROM	TO		
9. WILL WORK BE PERFORMED ENTIRELY OUTSIDE USUAL WORKING HOURS?			
<input type="checkbox"/> YES <input type="checkbox"/> NO IF "NO, INDICATE ESTIMATED NUMBER OF HOURS OR DAYS OF ABSENCE FROM WORK _____			
10. DO YOUR OFFICIAL DUTIES RELATE IN ANY WAY TO THE PROPOSED ACTIVITY?			
<input type="checkbox"/> NO <input type="checkbox"/> YES (Describe) _____			
*10. IF PROVIDING CONSULTATIVE OR PROFESSIONAL SERVICES, ARE YOUR WOULD-BE ASSOCIATES RECEIVING OR WILL THEY SEEK, A GRANT OR CONTRACT FROM A FEDERAL AGENCY?			
<input type="checkbox"/> NO <input type="checkbox"/> YES (Describe) _____			
11. METHOD OR BASIS OF COMPENSATION		12. WILL COMPENSATION BE DERIVED FROM A HHS GRANT OR CONTRACT?	
<input type="checkbox"/> FEE <input type="checkbox"/> HONORARIUM <input type="checkbox"/> PER DIEM <input type="checkbox"/> PER ANNUM <input type="checkbox"/> ROYALTY <input type="checkbox"/> EXPENSES <input type="checkbox"/> OTHER (Specify) _____		<input type="checkbox"/> NO <input type="checkbox"/> YES (Describe) _____	
13. THIS REQUEST IS MADE WITH FULL KNOWLEDGE OF DEPARTMENT AND OPERATING DIVISION POLICY AND PROCEDURES ON OUTSIDE ACTIVITIES. THE STATEMENTS I HAVE MADE ARE TRUE, COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.			
14. SIGNATURE OF EMPLOYEE		15. DATE	16. ADDITIONAL INFORMATION ATTACHED
			<input type="checkbox"/> YES <input type="checkbox"/> NO
17. ACTION RECOMMENDED BY REVIEWING OFFICIAL			
a. <input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL	b. SIGNATURE	c. TITLE	d. DATE
18. ACTION TAKEN			
a. <input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL	b. SIGNATURE	c. TITLE	d. DATE

*See reverse of form
HHS 520 (1/82)

**Appendix II
HHS/NIH Forms and Instructions for
Requesting Approval for Writing Activities
and Distinguishing Between Outside
Activities and Official Duties**

INSTRUCTIONS

- *Item 5 - Self-Employment: If applicable, indicate self-employment, the type of service (as medical, legal, etc.), whether alone or with partners, giving their names, and, if providing professional services to a large number of clients or patients, estimate the total number rather than listing them separately.
 - *Item 10 - Federal Grants or Contracts Involved: Describe the Federal grants or contracts (type, granting or contracting department, etc.). Full details must be provided on any aspect of professional and consultative services which involves, directly or indirectly, the preparation of grant applications, contract proposals, program reports, and other material which are designed to become the subject of dealings between institutions and government units and the Federal Government.
 - *Item 16 - Attachments: Be sure to sign copies of all attachments submitted.
-
- *ITEM 17 - COMMENTS OF REVIEWING OFFICIAL

*ITEM 18 - REASON FOR DISAPPROVAL

**Appendix II
HHS/NIH Forms and Instructions for
Requesting Approval for Writing Activities
and Distinguishing Between Outside
Activities and Official Duties**

**Figure II.2: NIH Supplement to Form
HHS 520**

**Supplement to Form HHS 520 for
WRITING AND EDITING**

Use this supplement with Form HHS 520. Initiate Form HHS 520 far enough in advance of the activity so that it reaches the Recruitment and Employee Benefits Branch (REBB), Division of Personnel Management (DPM), NIH, at least two weeks prior to the date of the activity.

DHHS Standards of Conduct and NIH Manual Chapter 2300-735-4 contain the rules and regulations pertaining to outside activities.

Items 1 through 6 - Complete as requested on the form.

Item 7 - Nature of Activity

- o Give title of chapter, book or journal.
- o Add the following statement: *"The Department's requirements with regard to writing and editing done not as part of official duties will be observed."*
- o If this request is a result of an activity that was performed as official business, please see Paragraph D.3. of the NIH Issuance on Outside Work and Activities.

Item 8 - Estimated Time Involved

- o The period covered in items 8a, b, and c should be consistent. Review 8c to assure that the correct amount of annual leave is recorded.
- o Commissioned Officers may only take *whole days* of annual leave, *not hours*. Station leave may not be used for compensated outside work.

Item 9 - Complete as requested on the form.

Item 10 - "N/A"

Items 11 through 16 - Complete as requested on the form.

Item 17 - Action Recommended

- o Make sure that Recommending Official has checked Approval/Disapproval block and has signed and dated request.

Item 18 - Action Taken

- o Show title of approving official (*as cited in NIH Manual 1130, Delegation of Authority, Personnel No. 16*).

Deputy Director for Intramural Research, NIH - approves all requests for employees who are primarily involved in intramural research programs.

Deputy Director for Extramural Research, NIH - approves all requests for employees who are primarily involved in the management of grants, cooperative agreements, or contracts programs. (This includes requests for Division and Associate Directors having responsibility for contract/grant/cooperative agreement programs)

Associate Directors, NIH - approve all requests in their respective areas

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**Appendix II
HHS/NIH Forms and Instructions for
Requesting Approval for Writing Activities
and Distinguishing Between Outside
Activities and Official Duties**

BID Directors - approve all requests in their respective areas if they are without remuneration (expenses only). (Note: Copies of BID approved HHS 520s are to be sent to REBB)

Director, NIH - approves all requests for:

- o BID Directors or other comparable high-level officials.
- o Consulting for Industry
- o Professional or consultive services to organizations or Government Units that have been awarded, recently applied for, or are potential recipients of a grant or contract.
- o Participation in litigation as an outside activity where the litigation involves or is likely to involve the Government

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NIST Form for Requesting Approval of Outside Activity (to Distinguish Between Official Duties and Outside Activities)

Figure III: Request for Approval of Outside Activity

NIST-1209 (REV. 4-90) ADMAN 10.04		U.S. DEPARTMENT OF COMMERCE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY		FOR PERSONNEL OFFICE USE ONLY	
REQUEST FOR APPROVAL OF OUTSIDE ACTIVITY					
Instructions: Requester completes Parts A and B and forwards for review through the management chain. Reviewer concurrence verifies accuracy of statements made. Reviewer may approve request and forward to next level; reject the request and return to the requester; or approve the request with restrictions and forward to the next level. Differences of opinion are discussed between the reviewer and the requester.					
Return finalized copy to the Personnel Office, Administration Building, Room A123.					
TO		PERSONNEL OFFICER		FROM (EMPLOYEE NAME)	DATE
THROUGH: REVIEWERS		INITIALS		COMMENTS/RESTRICTIONS	
		APPROVE	REJECT		
IMMEDIATE SUPERVISOR					
DIVISION CHIEF					
CENTER DIRECTOR					
MOU DIRECTOR					
PART A					
DESCRIBE YOUR DUTIES AT NIST AND THE WORK YOU PROPOSE TO DO FOR THE OUTSIDE EMPLOYER. EXPLAIN WHETHER A CONNECTION EXISTS BETWEEN THEM. (INCLUDE HOURS OF OUTSIDE WORK AND AMOUNT OF TIME YOU EXPECT TO SPEND ON THE WORK.)					
PART B					
				YES	NO
1. Are you to be compensated for the work?				<input type="checkbox"/>	<input type="checkbox"/>
2. Could the work be performed as an official activity?				<input type="checkbox"/>	<input type="checkbox"/>
3. Have you performed similar work before as an official activity?				<input type="checkbox"/>	<input type="checkbox"/>
4. Will the work be performed in the course of or in connection with your official responsibilities? (Whether you are on leave is irrelevant in determining if the work is performed in the course of or in connection with official responsibilities.)				<input type="checkbox"/>	<input type="checkbox"/>
5. Is the work to be performed on Government premises?				<input type="checkbox"/>	<input type="checkbox"/>
6. Is Government equipment or supplies used?				<input type="checkbox"/>	<input type="checkbox"/>
7. Does the subject matter deal with NIST or DoC operations, programs, or responsibilities?				<input type="checkbox"/>	<input type="checkbox"/>
(Continued on reverse)					

ELECTRONIC FORM

**Appendix III
NIST Form for Requesting Approval of
Outside Activity (to Distinguish Between
Official Duties and Outside Activities)**

PART B (Continued)

	YES	NO
8. Does the subject matter depend on information you obtained as an NIST employee?	<input type="checkbox"/>	<input type="checkbox"/>
9. If yes, is that information publicly available or would it be made available upon request?	<input type="checkbox"/>	<input type="checkbox"/>
10. Does the subject matter draw substantially on official data or ideas not publicly available?	<input type="checkbox"/>	<input type="checkbox"/>
11. Does the work involve a device developed by you directly or under your supervision in an official capacity?	<input type="checkbox"/>	<input type="checkbox"/>
12. If yes, is research or development on the device continuing?	<input type="checkbox"/>	<input type="checkbox"/>
13. Was the work offered because of your NIST affiliation?	<input type="checkbox"/>	<input type="checkbox"/>
14. Will your NIST affiliation be mentioned in related announcements, letters, promotions, etc.?	<input type="checkbox"/>	<input type="checkbox"/>
15. Does the outside employer now have or is it likely to have grants or contracts with NIST?	<input type="checkbox"/>	<input type="checkbox"/>
16. Will performing this work give the appearance that the outside employer has an advantage in competing for NIST or DoC contracts or grants?	<input type="checkbox"/>	<input type="checkbox"/>
17. Would the work create the appearance that you are using your public office for private gain?	<input type="checkbox"/>	<input type="checkbox"/>
18. Does it create the appearance of NIST losing complete independence or impartiality?	<input type="checkbox"/>	<input type="checkbox"/>
- of making a Government decision outside official channels?	<input type="checkbox"/>	<input type="checkbox"/>
- of adversely affecting public confidence in NIST's or DoC's integrity?	<input type="checkbox"/>	<input type="checkbox"/>

IF ANY ANSWERS IN PART B ARE YES, EXPLAIN BELOW. SPECIFY WHICH QUESTION(S) YOU ARE EXPLAINING.

The Privacy Act of 1974 (P.L. 93-519) requires that you be told under what authority this information is requested, why it is requested, and the effect of failing to supply it. The authority for collecting this information is Executive Order 11222. The information you supply is mandatory for approval of outside activities.

NIST-1209 (REV. 4-90)
ELECTRONIC FORM

United States Geological Survey Form Stating Prohibited Copyright for Documents Prepared as Part of Official Duties

Figure IV: Copyright Transfer for U.S.
Government Authors

COPYRIGHT TRANSFER FOR U.S. GOVERNMENT AUTHORS

Date:

Title of article:

I (we) certify that the article named above was prepared as part of my (our) official duties. The article is thus in the public domain and cannot be copyrighted.

Signature(s) of U.S. Government author(s):

Comments From the National Science Foundation

NATIONAL SCIENCE FOUNDATION
WASHINGTON, D.C. 20550

October 1, 1992



Bernard L. Ungar
Director
Federal Human Resources Management Issues
General Government Division
General Accounting Office
Washington, DC 20548

Subject: GAO Draft Report "Better NSF Guidance on Employee Book Writing Could Help Avoid Ethics Problems"

Dear Mr. Ungar:

The National Science Foundation agrees with the recommendation of the captioned report and is already implementing it. NSF guidance on employee writings, including journal articles as well as books, has been drafted and will be discussed by an intra-agency group of managers next week. We will make a copy available to you before any final decision is made by NSF management and will be seeking advice from many sources on questions raised, of which several are described later in this letter.

Your report makes fairly evident the reason why NSF has not previously seen a pressing need for written guidance on books written by employees. The table on page 14 shows that NSF employees wrote or contributed to a total of fifteen books published over more than six years -- in short, roughly two per year. Of the fifteen, five were written before the employee came to NSF and only published while the employee was at NSF, so that NSF presumably had no rights or interest in them. Of the remaining ten books, eight (as reported in footnote b to the table) were written without use of government time and resources. You told me that limited inquiries tended to confirm the assertions of the authors in this respect.

This leaves the two books that triggered your inquiry as the only ones identified on which any NSF resources were employed. And as to those, the authors received no royalties or other income from their publication. Further, they sought from their supervisor, and obtained, approval for their work on the books on duty time. They offered to publish at least the first of the books as an NSF publication. The supervisor preferred that the work be published without official imprimatur or public expense. And the authors also sought and obtained legal advice from my office.

In short, on-duty book-writing has not been a major problem for NSF. That may be because the NSF operates no laboratories and our employees do little or no research directly (except that some

Now on p. 8.

employees are allowed release time for independent research that keeps them fresh in their fields). The four agencies whose policies you cite all differ from the NSF in this respect.

Having said this, we expect that our employees probably do publish enough, not only in books, but in journals and the like, so that they should have written guidance and in many cases official approval. We therefore welcome and accept your recommendation. We expect that our policy will be more complete and appropriate because of what we can learn from materials you have provided us and from consulting further with you and our colleagues at other agencies.

We do have a number of questions on which we would like the benefit of further consultation with you and your colleagues. Most of those have to do with whether or not we can or should treat these matters as quite so either-or (either official government duties or outside activities, but never both) or quite so simple and straightforward generally as at least some passages in the draft report seem to suggest. Here are some specific questions:

1. **Use of Federal appropriations and resources.** Once we authorize an employee to undertake some research or writing on official duty, must all of that research or writing be done on official duty? Or can NSF appropriately approve some use of official time and resources for independent research or the like, but on the understanding, more or less explicit, that the employee will also devote some of his own time to the work?
2. **Copyright.** We agree that once an employee uses any Government time or other resources on a writing, the writing becomes a work of the Government that cannot be copyrighted. But official writings of the Government are frequently reprinted with annotations or the like that can be copyrighted. (E.g., privately published compilations of Federal cases, like the West Reporters.) Is it possible that a writing prepared on the job can be similarly augmented in ways that give rise to copyright in the augmentation, though not in the work supported by the Government? In light of the answer, what is the appropriate content of any copyright notice identifying the writing as in whole or in part a "work of the Government".
3. **Publication/printing.** The report appears to assume that something written by an employee-author on official duty must necessarily be published as "government materials". Yet we note that the National Aeronautics and Space Administration provides for what it calls "non-NASA Publication" (see page 4 of the *NASA Publication Guide*, NASA SP-7047). Section 501 of title 44 of the United States Code and its implementing regulations do require that all printing for Executive agencies be done by the Government Printing Office. But is every printing of

what originated as a Government document "for" the Government? (Consider again the West system reporters.) Do agencies have an obligation to publish everything their employees write on duty? We would not have thought so. What is to stop anyone, including the employee herself or a private publisher, from publishing a public document in which no copyright resides? Does it matter one way or the other if, as in the current case, the Government has declined to use its own resources to publish?

4. **Ethics.** We completely agree that an employee should not properly accept royalties or any other compensation for a publication that derives in whole or in part from work done on official duty. As far as we know, incidentally, and as far as you report, no NSF employee has done that. Our policy will definitely cover this point. We also particularly share the concerns you attribute to the Office of Government Ethics about directing a subordinate to perform services in connection with a writing that will be privately published. 18 U.S.C. §208(a) would be implicated only if the supervisor has a *financial* interest, such as would arise from royalties, and hence would evidently not apply to any case you have identified. Nonetheless, the supervisor would still have a personal interest that could create at least an appearance that the supervisor was using his public office for private gain. What are the appropriate limits or approvals for such cases? Should a distinction be drawn between a subordinate who is a willing co-author and one who is asked to perform routine clerical or administrative tasks?

We would be glad to have your thoughts on these questions, either soon or after you have seen how we have resolved them in a draft policy. Assistant General Counsel John Chester is handling this matter. He can be reached on (202) 357-9435 (voice) and (202) 357-7521 (facsimile) and can receive electronic mail as jchester@nsf through BITNET, as jchester@nsf.gov through INTERNET, or as 76137,772 through CompuServe.

Thank you for your thoughtful recommendations and report. We look forward to working with you as we proceed.

Sincerely,


Charles H. Herz
General Counsel.

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