



## CREA on Outside Writing January 12, 2010

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**Introduction.** This is a restatement, somewhat abbreviated, of CREA’s already stated position on employees writing or speaking on public policy matters on their own time, using personal, non-governmental resources.

**Importance of Outside Writing.** CREA believes that outside writing, lecturing, and teaching by CRS staff are important for professional growth and development. These activities generate interactions with academic and professional colleagues; advance employees’ research and speaking skills; and provide opportunities for feedback on ideas and analysis. Such activities may also contribute to a certain public recognition and standing of the employee as an expert in the subject area, reflecting positively on the agency in general. It is significant to note that “recognition of the analyst’s professional expertise” by those *outside* of the congressional community is a specific ranking factor in promotion evaluation for higher-level grades in CRS.<sup>1</sup> It would be contradictory for the agency to require such outside recognition as an expert as a factor for promotion, and then to discourage employees from engaging in precisely those kinds of outside writing and scholarship activities which may garner such recognition. Many of our colleagues in CRS currently engage in outside writing in their areas of expertise for journals, studies, and other publications, and participate in outside speaking, lecturing, and teaching.

**Right to Speech and Expression.** The right to engage as a private citizen in outside writing on issues of public policy and public concern does not derive from Library of Congress regulations, nor depend upon the forbearance of CRS management, but rather has its basis in the First Amendment to the United States Constitution. As explained by the United States Court of Appeals for D.C.: “As a public employee [appellant] retains his First Amendment rights to speak on matters of public concern upon entry into public service.”<sup>2</sup> The Supreme Court has recognized the important contribution to society made by federal employees in sharing their knowledge and

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<sup>1</sup> See, e.g., Position Description and Ranking Factors, Social Science Analyst, GS-15, Factor 1-9.

<sup>2</sup> Van Ee v. EPA, 202 F.3d 296, 304 (D.C.Cir. 2000); U.S. v. N.T.E.U. 513 U.S. 454, 465 (1995); Pickering v. Board of Education, 391 U.S. 563 (1968); Connick v. Myers, 461 U.S. 138 (1983); Rankin v. McPherson, 483 U.S. 378 (1987).

expertise through outside writing and lecturing: “Federal employees who write for publication in their spare time have made significant contributions to the marketplace of ideas.”<sup>3</sup>

**Library Regulations and CRS Policy.** Library regulations (LCRs) expressly **encourage** outside teaching, lecturing, and writing: “Staff members are encouraged to engage in teaching, lecturing, or writing that is not prohibited by law.” (LCR 2023-3, Sec. 3A ) There is *no* law that prohibits CRS staff from engaging generally in outside writing activities on matters of public concern.

Writing for publication on the outside may often attract the most interest when it relates to topical matters, that is, the “hot issues” of the day. Staff have a responsibility under Library regulations when “speaking and writing on controversial matters ... to disassociate themselves explicitly from the Library and from their official positions.” LCR 2023-3, Sec. 3B. The Library regulations, therefore, expressly contemplate employees weighing in on “controversial matters,” but require that they “disassociate themselves” from their positions. Providing *no* identification of oneself as a CRS employee is the consummate “disassociation,” but where an association or identification *is* made concerning one’s official status, the employee should provide an explicit “disclaimer.” CREA suggests that when writing on such matters, even if there is no specific identification of the individual as a CRS employee, that the employee, out of an abundance of caution, provide a general disclaimer that the views expressed are personal and do not reflect the position or views of any agency or organization.

Current Library regulations now state that “[p]ersonal writings as well as prepared or extemporaneous speeches by staff members shall not be subject to prior review.” LCR 2023-3, Sec. 3B. The former policy requiring review of outside writings has thus been revoked. CREA would still suggest that a staffer may wish to voluntarily provide an opportunity for a supervisor or other Division manager to review an outside writing for accuracy and policy. Where the subject relates to “a field of a staff member’s official specialization or the special clientele which a staff member serves, and where some association may be made with a staff member’s official status,” LCRs state that staff shall: “(1) assure accurate presentation of the facts about the Library and Library-related matters; (2) avoid the misrepresentation of Library policies; (3) avoid sources of potential damage to their ability to perform official Library duties in an objective and nonpartisan manner; and (4) assure, when appropriate, that staff members’ opinions clearly differentiate from Library policy.”

In a policy statement from the Director in 2004, the Director asked staff to exercise caution when writing on controversial matters on the outside concerning “issues for which [the staffer has] primary responsibility for the Service.” CREA also urges employees to write on the outside in a

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<sup>3</sup> *U.S. v. N.T.E.U.*, 513 U.S. 454, 464 (1995).

careful and measured manner which reflects the nonpartisanship, objectivity, and professionalism that has come to be associated with the staff of CRS.

Clearly, outside writing should not reflect a partisan bias in one's research. "Partisanship" in federal law means relating to a political party and/or the candidates of a political party.<sup>4</sup> Overtly partisan polemics in outside writings based upon political party preference or doctrine could potentially damage the credibility of one's otherwise nonpartisan official work.

Objectivity addresses the integrity of the scholarship and methodology employed in the formulation and presentation of one's work. In common usage, objective is defined as "expressing or dealing with facts or conditions as perceived without distortion by personal feelings, prejudices, or interpretations" (Merriam-Webster). The detailed CRS handbook on objectivity in official CRS duties similarly stresses the methodology and scholarship employed in one's work and the fair consideration of various and competing arguments.<sup>5</sup>

That a staffer has, in outside writing, reached a conclusion or expressed an opinion on a public policy matter does *not* indicate that one is no longer "objective" nor "unbiased." Rather, when outside writings are based on nonpartisan, independent, and generally accepted methodologies of analysis and scholarship, and include appropriate competing theories and hypotheses, such writings and conclusions are objective by definition. No federal employee, not even a federal judge (who is held to the highest standard of impartiality), is deemed to be biased or partial on an official matter solely because that employee has demonstrated in outside writings or speeches that he or she has a particular opinion, idea, or philosophy concerning a relevant public policy or legal principle.

**Outside Employment and Compensated Activity.** Compensated outside activity may raise conflict of interest issues that simple expressions of one's opinion on the outside do not. Library regulations at Section 2A(1) and Section 2A(6) of LCR 2023-3 ("Outside Employment") address appearances of conflicts of interest, and apply to the "acceptance of a fee, compensation, gift, payment of expense, or any other thing of substantial monetary value" (Section 2A(1)); or when one engages in outside "employment with any person, firm or other private organization having business either directly or indirectly with the Library ...." (Section 2A(6)). Staff must thus be sensitive to the traditional appearance of "conflict of interest" issues in the federal government involving outside private payments and the source and interests of private employers.

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<sup>4</sup> Note, e.g., definition of "partisan," in 5 C.F.R. 734.101; *Blaylock v. United States Merit Systems Protection Board*, 851 F.2d 1348, 1352, 1353 (11th Cir. 1988).

<sup>5</sup> "Objectivity and Nonpartisanship in CRS Products and Services, Guidelines and Procedures," at 3 (December 1996).

**Conclusion.** CREA is concerned that CRS management appears to be increasingly restricting CRS employees' rights to engage in outside speaking and writing. CREA believes this could be detrimental not only to the individual employee, but to the professionalism, reputation, and mission of CRS as a whole.