ATTACHMENT 2

OOD

Effective: January 2020

SUBMISSION AND PROCESSING OF REQUESTS FOR SPEAKING ENGAGEMENTS

PURPOSE:	To announce the establishment of a new automated speaking engagement request portal and to restate EOIR's established policy on speaking engagements and the procedures employees must follow when requesting approval to speak at outside engagements
OWNER:	Office of the Director
AUTHORITY:	18 U.S.C. § 209; 5 CFR § 2635.201-205, 2635.807(a)(2)(iii)(D); 8 CFR § 1003.0(b)(1); 41 CFR Chapter 304;
CANCELLATION:	None

In conjunction with the launch of an updated speaking engagement team (SET) webpage and automated request form, the Office of the Director is reissuing the September 1, 2017 memorandum outlining the speaking engagement process. The reissued memorandum does not substantively alter the original memorandum, though it does clarify some points that have occasionally caused confusion.[1]

I. Introduction

Our agency's stakeholders and other members of the public continue to be interested in hearing about, and understanding, what the agency does and specifically how immigration courts operate. Our immigration judges, members of the Board of Immigration Appeals, and administrative law judges, along with senior EOIR officials and other staff, are frequently invited to speak or write on immigration law and policy at different events across the country. Depending on who is invited, who has issued the invitation, the forum, and the topic of the

[1] The reissued memorandum also does not alter, or purport to alter, the Memorandum of Understanding between EOIR and the National Association of Immigration Judges executed in May 2018.

discussion or presentation, a determination must be made as to which capacity is most appropriate for the employee's participation on that specific occasion.

On September 1, 2017, a memorandum was issued to outline the speaking engagement[2] process and provide clarity regarding the decision-making process. Since that time, the Office of Policy has worked to implement an online process to provide for more certainty and clarity surrounding the submission, tracking, and delineation of responsibility of each request. This memorandum does not change the approval process; rather, the changes are only to the mechanism by which approval is sought. To that end, the following sets forth details of the revised mechanism to carry out EOIR's established policy on speaking engagements and the procedures employees must follow when requesting approval to speak.

II. Approval Process

There are only two capacities, which are further described below in sections III and IV, in which an employee may participate in a speaking engagement: (1) official capacity or (2) personal capacity. It is the nature of the engagement, based on the totality of the circumstances that determines the appropriate capacity—the label given by either the inviter or the invitee is not dispositive. An employee who has been invited to participate in a speaking engagement related to immigration law or policy issues, the employee's official EOIR duties or position, or any agency programs and policies, or who has been invited because of the employee's official duties or position, has been invited in an official capacity regardless of how the invitation is labeled. All such requests must be approved by EOIR or the Department of Justice, and invitees should submit a request to participate via the new speaking engagement portal located on EOIR's intranet page. The request should be submitted no later than two weeks before the scheduled event. Submissions should include presentation slides and hand out materials if applicable and complete talking points at a minimum (*i.e.*, an outline, overview, or set of abbreviated talking points is an insufficient submission).

Requests to speak in a personal capacity are also subject to review through the SET process to determine whether they involve genuinely personal capacity events, whether there are any ethics concerns with the engagement, and whether the engagement will disrupt EOIR operations by requiring the employee to miss work.[3] Requests that are for genuinely personal capacity engagements that raise no ethics concerns and occur outside of the requester's normal EOIR work schedule will ordinarily be approved.[4]

All requests, regardless of capacity, must comply with applicable law and agency policies, including all ethics laws, the Hatch Act, any applicable ethics and professionalism guides or rules, Department regulations in title 28 of the Code of Federal Regulations, the Justice Manual, and any

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[2] For purposes of this memorandum, "speaking engagement" includes written pieces intended for publication in any print or online media.

[3] Requests for annual leave to speak in a genuinely personal capacity at an event that does not raise any ethics concerns, like all requests for annual leave, remain subject to supervisory approval.

[4] Although most invitations to speaking engagements for senior executive managers at EOIR are necessarily invitations to speak in an official capacity, there is no blanket prohibition on senior executive managers speaking in a personal capacity if the engagement is a genuinely personal capacity event that does not implicate any ethics issues or disrupt EOIR operations.

other applicable EOIR or Department policies. Further, all employees, especially all non-supervisory adjudicators, seeking approval of a speaking engagement request in either capacity are reminded of the importance of maintaining impartiality and avoiding the appearance of impropriety, favoritism, or preferential treatment.

A. Supervisor Review

The new speaking engagement request form is housed on an internal portal that automates the speaking request process and allows an employee to easily upload information related to their proposed speaking engagement. Once submitted, the portal automatically sends the form to the employee's first-line supervisor for review. Supervisors will receive notification from the SET portal to review the form and related materials so the supervisors may determine whether the request should move forward in the review process. If the request is incomplete or the supervisor does not approve of the requested engagement, the supervisor will deny the request via the portal and provide an explanation for the denial. If the denial is made based on an incomplete or vague submission, the employee may resubmit a request including the necessary information. If the request passes the supervisor's review, the supervisor will approve the request in the portal and it will be routed to the headquarters speaking engagement team (SET) for further review.

B. SET Review

After initial supervisory review and approval, requests must be reviewed by the SET, which consists of the Office of Policy, the Office of the General Counsel (OGC), and the Office of the Director. This process ensures compliance with both the law and agency policy and consistency in EOIR's communications. If the SET determines that an employee's request to speak is inappropriate, a recommendation for a denial with an explanation will be sent to the employee's supervisor via the portal. If the SET determines that the request to speak is appropriate, a recommendation for approval will be sent to the employee's supervisor.

C. Ethics Review

The OGC Ethics Program (Ethics) will receive and review any SET requests that have been recommended for approval. Ethics neither approves nor denies requests to speak, but offers guidance to ensure that speakers do not experience an ethical dilemma. If Ethics reviews a request and has guidance to provide to an employee, Ethics will submit its comments to the employee and supervisor via the speaking engagement portal.

D. Final Review

After the SET and Ethics review the request, the employee's supervisor will make the final decision concerning approval or denial of the request and inform the employee of the supervisor's decision. The supervisor will also advise the employee of any guidance that has been offered by Ethics. If circumstances surrounding the speaking event change, the requesting employee should convey such changes to the supervisor, who should consult with the SET via EOIR.Speakers@EOIR.USDOJ.GOV to determine whether the employee's participation is still advisable. Note that communication via email should be only for approved requests or troubleshooting – all requests and resubmissions must be submitted through the portal.

III. Speaking in Official Capacity

When an EOIR employee is assigned to participate as a speaker or panel participant or otherwise present information on behalf of the agency at a conference or other event, the employee is doing so in an official capacity. Any EOIR employee speaking at an event hosted by a Federal Department, Office, or Agency, or at an event featuring representatives from other Departments, Offices, Agencies or members of Congress, must speak in an official capacity. This includes speaking at naturalization ceremonies even when not administering the naturalization oath.

If travel is required for an employee to speak in an official capacity, generally the employee may not accept reimbursement for travel and related expenses from any source other than the government. However, 41 C.F.R. Chapter 304 authorizes the Department (or the employee on the Department's behalf) to accept payment of travel expenses from a non-Federal source, but only "when specifically authorized to do so" and "only for official travel to a meeting."[5] Please note that EOIR has determined, as a matter of policy, that it will not accept any payment for the official travel of its employees by a non-Federal source that is considered a prohibited source for EOIR. A prohibited source is considered a person or entity who seeks official action from the agency, does business with the agency, appears before the agency, or is an organization a majority of whose members are described in this section.[6] As an adjudicatory body, EOIR should expect to be under constant scrutiny. EOIR employees must avoid all improprieties and the appearance of impropriety to ensure complete public confidence in the integrity of our agency. The acceptance of travel reimbursement for official duties from prohibited sources could undermine the public's confidence in the impartiality of EOIR's adjudicators. Likewise, under no circumstances may an EOIR employee receive a supplementation of salary (e.g., an honorarium) from a non-Federal source for a speaking activity that is done in an official capacity.[7]

IV. Speaking in a Personal Capacity

When an EOIR employee participates in a speaking engagement in a personal capacity, the employee is not appearing at an event as part of the employee's official duties or on behalf of the agency. Therefore, the employee may not imply that EOIR is endorsing or sanctioning the speaking engagement, as it is considered an outside speaking activity. EOIR employees may not use or permit the use of an official title or position to identify themselves in connection with the speaking activity unless it is included as one of several biographical details when such information is given to identify the individual in connection with the activity, provided that their title or position is given no more prominence than other significant biographical details. When one's official title is used in this manner, as part of an overall biographical sketch, a disclaimer is not required. Alternatively, in limited circumstances where an introduction does not include an overall biographical sketch, an employee may be introduced using a title so long as the employee indicates at the beginning of the remarks that the employee is not speaking on behalf of the agency.

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[5] *41 C.F.R. § 304-5.3 further provides that reimbursement for travel from outside sources must not be authorized if the approving official determines that acceptance of the payment under the circumstances would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations. An employee who accepts travel from a non-Federal source in violation of 41 C.F.R. § 304-1.2 may be required to repay the amount of payment accepted from the non-Federal source and could be subject to additional penalties*

[6] *5 C.F.R. § 2635.203(d).*

[7] *18 U.S.C. § 209.*

Additionally, the employee may not permit the sponsoring organization to use the employee's official title in the promotion of the event in which the employee is invited to speak.

If an EOIR employee is traveling to speak at an event in a personal capacity, the employee is not entitled to travel reimbursement by the agency. However, when traveling in a personal capacity, an EOIR employee may accept reimbursements for travel expenses from the entity that is sponsoring the activity.[8] On the other hand, employees offered travel reimbursement for mere attendance (as opposed to speaking on a panel) at a conference in a personal capacity must contact Ethics for a determination as to whether accepting the reimbursement of travel expenses is appropriate. Ethics will apply the gift rules in deciding whether such employee may accept payment of these expenses. Factors that must be taken into consideration when applying the gift rules include the source and value of the reimbursement.[9] In either circumstance, the agency highly encourages consulting their supervisor to ensure the employee's evaluation of the engagement is in line with the agency's.

Please remember that the issuer of the invitation cannot be a prohibited source, and no EOIR employee may receive compensation for any outside speaking activity that relates to their official duties.

V. Conclusion

This policy does not necessarily address every situation that may arise related to speaking engagements. It is intended to restate and clarify a standard by which events may be evaluated. If questions arise regarding the application of this policy or the proper determination of a speaking capacity, please contact the Speakers Inbox at EOIR.Speakers@EOIR.USDOJ.GOV.

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[8] *Sanjour v. Environmental Protection Agency*, 56 F.3d 85 (D.C. Cir. 1995); 5 C.F.R. § 2635.807(a)(2)(iii)(D).
[9] 5 C.F.R. § 2635.201-205.

Attachment A

The Speaking Engagement Policy identifies the two capacities (Official and Personal) in which an EOIR employee may speak when the employee is invited to participate in an event that involves immigration issues, relates to the employee's official duties, or is invited because of the employee's official position at the agency. Official and Personal Capacity designations are provided below with examples of appropriate events found within each category. Note that this is not an exclusive list, as some events, activities and forums may not be listed below.

Official Capacity

1. For any event where at least one DOJ or EOIR official is participating officially, all EOIR participants must speak in their official capacity.
2. For any event where an inviter is a Federal government agency and the employee is asked to speak or present at a government event, the EOIR employee must speak in their official capacity.
3. Immigration Conferences or similar events where the subject is immigration (including litigation)
4. Meetings with Stakeholders
5. Naturalization Ceremony, as guest speaker or to administer the oath
6. Court Visits by Outside Groups
7. Pro Bono training related to immigration
8. EOIR Mock Hearing Program
9. Recruiting for EOIR internship program

Personal Capacity

1. Moot Court judge - not immigration related
2. Commencement Speaker
3. Career Day/Alumni Career Panel - to discuss full career path and experience
4. Meeting with Boy Scouts or Girl Scouts or similar organizations
5. Interview based on book written in personal capacity
6. Speaking at a book club or hobbyist meeting