hi I'm Margie Levine assistant counsel

0:09

with the FX law and policy Branch at the

0:11

office of government ethics

0:13

this is part one of a two-part training

0:16

on the seeking and negotiating

0:17

employment rules which are in subpart F

0:20

of the standards of ethical conduct and

0:23

subpart f starts at five cfrs 2635 601

0:28

for those of you who would like to pull

0:30

up the regulation during this training

0:33

this training is geared toward newer

0:35

ethics officials as well as any ethics

0:38

officials meeting or wanting a refresher

0:40

on subpartaf

0:42

before jumping into the training it's

0:45

important to consider why subpart F

0:47

matters and what ethics concern subpart

0:50

f is addressing

0:52

it's addressing the concern that federal

0:55

employees who are looking for other jobs

0:57

or positions outside the federal

0:59

government

1:00

might favor someone with whom they're

1:02

seeking employment and the work they do

1:04

for the government and that would

1:06

undermine the Public's trust in the

1:08

Integrity of government services

1:11

and unfortunately there are several real

1:14

life examples of employees favoring

1:16

prospective Employers in their

1:18

government work in facing serious

1:20

consequences as a result

1:22

an example you may be familiar with is

1:26

the case involving Darlene drouin

1:28

who is at one point the Air Force's

1:30

second highest procurement official

1:33

and she favored Boeing in agency

1:35

contract matters while at the same time

1:37

negotiating for employment with Boeing

1:40

her actions violated not only to Part F

1:44

but also the criminal conflict of

1:46

interest statute 18 USC 208

1:50

and she ultimately had to serve jail

1:52

time and pay a fine among other things

1:54

as a result of this criminal violation

1:57

and you'll find other examples of

1:59

similar violations involving negotiating

2:01

employment in OG's annual prosecution

2:04

surveys which are available on oge's

2:07

website next slide

2:12

in this training I will provide you with

2:15

an overview of the subpart F

2:16

requirements and the key terms and

2:18

issues that arise when applying subpart

2:21

apps and we'll also talk more about the

2:24

significance of subpart f and

2:26

specifically how it can serve as a fence

2:28

that prevents that that prevents

2:31

executive branch employees from

2:32

violating the criminal conflict of

2:34

interest statues

2:36

and finally we'll highlight the

2:38

importance of you as ethics officials in

2:41

training and Advising employees as early

2:43

and as often as possible on the subpart

2:46

F requirements and particularly training

2:48

them on when they should come to you for

2:50

advice to determine whether they have

2:52

any ethics obligations as a result of

2:55

their job search

2:56

next slide

3:00

we'll start with A visual representation

3:02

of what subpart f is and where it came

3:05

from

3:06

you can also find a written overview of

3:08

subpart f in section 2635 601

3:14

OGE issues subpart f as a result of

3:17

executive order 12674

3:21

which was issued by the first President

3:22

Bush

3:23

and that executive order established the

3:26

14 principles of ethical conduct that

3:28

you signed at the beginning of the

3:30

standards of conduct including one

3:32

principle about seeking employment which

3:35

says employees shall not engage in

3:38

outside employment or activities

3:40

including speaking or negotiating for

3:43

employment that conflict with official

3:45

government duties and responsibilities

3:48

and that executive order authorized and

3:50

required OGE to implement rules about

3:53

each of the principles of ethical

3:54

conduct which led to OG issuing subpart

3:57

F among other sections in the standards

4:00

of conduct

4:01

and what is subparta

4:03

it has two main components

4:07

first it's a

4:10

that is largely based on the recusal

4:12

requirement in 18 USC 208 the criminal

4:15

conflict of interest statute and

4:17

specifically the part of 208 regarding

4:19

negotiating for employment

4:22

but the subparate fpusal requirement is

4:25

also based on impartiality concerns

4:27

regarding job search actions that fall

4:30

short of negotiating for employment also

4:33

known in subpartise as seeking

4:34

employment

4:36

the second component of subpart f is the

4:40

notification requirements for public

4:42

filers regarding negotiations or

4:44

agreements for post-government

4:46

employment or compensation

4:48

and those notification requirements come

4:51

from the stock act and we'll talk about

4:54

the stock act requirements in part two

4:56

of this presentation next slide

5:01

foreign

5:05

requirement under subpart f

5:08

under subpart apps an employee who is

5:11

seeking employment with a non-federal

5:13

entity must recues from particular

5:16

matters that to the employee's knowledge

5:18

affect the financial interests of the

5:21

prospective employer next slide

5:27

it's important to note that this recusal

5:29

requirement does not restrict employees

5:32

from job searching

5:33

executive branch employees can look for

5:36

and pursue whatever job opportunities

5:38

they want to pursue whether it's

5:40

something in the private sector or

5:41

another federal job

5:44

but what subpart f is restricting is

5:47

what employees can work on in their

5:49

government position when they're seeking

5:51

employment with a non-federal employer

5:54

whose Financial interests are affected

5:56

by the employee's government work

5:58

so if the employee is only looking for

6:00

other federal jobs then this recusal

6:03

does not apply

6:05

and if the non-federal prospective

6:08

employer's Financial interests will not

6:10

be affected by the matters the employee

6:12

works on for the government then again

6:14

the employee does not have this recusal

6:17

requirement

6:18

you as ethics officials are really in

6:21

the best position to address this

6:24

threshold question of whether the

6:26

non-federal prospective employers

6:28

Financial interests are affected by the

6:30

employee's government duties

6:32

and whether the employee meets the other

6:34

factors that trigger the recusal which

6:37

we'll talk about soon

6:39

and so I would encourage you in your

6:41

training and advice to employees on

6:43

subpart F to emphasize that they should

6:46

really come to you as early as possible

6:49

in their job search process and make

6:51

sure they they know how to contact you

6:53

that they have your contact info

6:55

and

6:57

recommend that they contact you at

7:00

start getting in touch

7:03

ideally even earlier than that when

7:05

they're considering a job search so that

7:07

you can advise them on whether they'll

7:09

have this refusal requirement

7:12

employees are not required by subpart F

7:15

to tell their supervisor that they're

7:17

seeking employment or that they have a

7:20

recusal because of a job search that

7:23

said

7:24

subproducts does require that if an

7:26

employee becomes aware of the need to

7:28

recuse but they must take whatever steps

7:31

are necessary to carry out the recusal

7:34

and practically speaking that might

7:36

include

7:38

letting their co-workers or supervisor

7:41

know about their their recusal

7:45

but technically they're you they're not

7:47

required by subpart F to to contact

7:49

their supervisor they should however

7:51

come to you their ethics officials so

7:54

that you can help them determine whether

7:56

they meet the factors that trigger the

7:58

subproduct for accusal

8:00

and besides the special question of

8:02

whether the prospective employers

8:04

Financial interests would be affected by

8:06

the employees government work the other

8:09

important the other important question

8:11

you would be advising the employees on

8:13

is to determine whether they're seeking

8:17

employment and we're about to talk about

8:19

what seeking employment means next slide

8:24

but first I want to note that the word

8:26

employment is also defined in subpart F

8:29

and not every outside opportunity that

8:32

the employee pursues will meet this

8:35

definition of employment

8:37

employment is defined and subpartoff so

8:39

you can see the elements of that

8:41

definition on this slide

8:43

as any form of non-federal employment or

8:47

business relationship involving the

8:50

provision of personal services by the

8:52

employee whether to be undertaken at the

8:55

same time as or subsequent to federal

8:57

employment

8:59

it includes but is not limited to

9:01

personal services as an officer director

9:05

employee agent attorney consultant

9:09

contractor General partner or a trustee

9:13

you might have noticed that compensation

9:15

isn't mentioned in this definition of

9:18

employment so

9:20

service on a board of directors whether

9:22

compensated or not would meet this

9:25

employment definition for purposes of a

9:27

subpart after accusal

9:29

that said it's been OG's long-standing

9:32

position that providing certain

9:34

uncompensated volunteer services like

9:37

volunteering at a soup kitchen is not

9:40

considered employment under subpart F

9:41

and you'll find and subpartace an

9:44

example

9:45

below the definition of employment

9:47

confirming this view that certain

9:49

volunteer work is not considered

9:51

employment

9:53

what is sometimes overlooked about the

9:56

definition of employment is the language

9:58

at the bottom of this slide

10:00

undertaken at the same time as or

10:03

subsequent to federal employment

10:06

so employment is not only the typical

10:08

job search situation like where the

10:11

employee is looking to leave their

10:13

government position for a position

10:15

elsewhere it also includes a position or

10:18

job the employee would take while

10:20

they're still working for the government

10:23

we talked about board service so that's

10:26

one example or let's say the employee

10:29

wants to teach an evening class or look

10:32

for clients for an outside business that

10:34

they have while still working for the

10:36

government these outside positions would

10:39

be covered by this subparative

10:41

definition of employment

10:44

I think when it comes to outside

10:45

activities and

10:47

employee would hold during their

10:49

government employment

10:51

understandably ethics officials are

10:53

focused ethics officials focus on the

10:56

applicable outside activity rules like

10:58

in subpart h of the standards of conduct

11:00

which include the rules about teaching

11:03

speaking and writing and maybe your

11:05

agency has a supplemental regulation

11:07

that includes a prior approval

11:09

requirement for outside activities so

11:12

subpart F and the question of whether

11:15

the seeking employment recusal is

11:17

triggered by an employee considering an

11:19

outside position may get lost in the mix

11:22

of other applicable ethics rules

11:24

and there may also be a tendency to

11:27

think of subpart f as only applying the

11:30

job searches for post-government

11:32

employment but as we see here

11:35

the employment definition is broader

11:37

than that and and will apply to some

11:39

outside activities or positions so if

11:42

you think you might be overlooking

11:44

subpart F when you get an outside

11:46

activity question

11:48

add please add this uh consideration of

11:52

whether the employee has any

11:54

subpartificable obligations to your

11:57

checklist when receiving outside

11:59

Activity questions next slide

12:04

foreign

12:08

requirement as we said is triggered when

12:11

the employee starts seeking employment

12:13

with a non-federal entity

12:15

so a key question for ethics officials

12:17

and employees is what is seeking

12:19

employment and when does it start

12:22

and according to the definition section

12:24

section 603b of subpart f an employee is

12:29

seeking employment when the employee

12:32

makes an unsolicited communication to a

12:35

prospective employer or the prospective

12:37

employer's agent or intermediary

12:39

regarding possible employment with that

12:42

employer unless the employee is only

12:44

requesting a job application

12:47

or seeking employment starts when the

12:50

prospective employer or prospective

12:52

employer's agent or intermediary makes

12:55

an unsolicited communication to the

12:58

employee regarding possible employment

13:00

and the employee makes a response other

13:03

than rejection

13:05

so you need this unsolicited

13:07

communication by either the employee or

13:10

the prospective employer

13:12

or by an intermediary of the employee or

13:15

a prospective employer in order to be

13:17

seeking employment

13:18

regarding intermediaries if let's say

13:22

the employee is using a Headhunter or

13:24

other employment search firm to help

13:26

them find a job

13:28

the employee is seeking employment with

13:30

a non-federal entity only if the

13:33

intermediary identifies for the employee

13:35

the companies that they've contacted on

13:38

the employee's behalf so if the

13:40

Headhunter hasn't told the employee the

13:42

names of the companies it's contacted

13:44

the employee is not seeking employment

13:47

with those companies and doesn't have a

13:49

recusal requirement

13:51

next slide

13:52

[Music]

13:57

although technology has certainly

13:58

Advanced over the years and as a result

14:01

the ways in which people look for jobs

14:03

has has changed over the years

14:06

the application of subpart f is the same

14:09

regardless of the technology used so in

14:13

number one on this slide posting your

14:16

resume or listing your professional

14:17

information or having a professional

14:20

profile on a website or social media

14:22

site like LinkedIn

14:25

is not seeking employment because your

14:28

profile isn't targeting any one

14:30

prospective employer it's not an

14:32

unsolicited communication with a

14:34

particular prospective employer

14:36

and please note that I'm not endorsing

14:39

LinkedIn and just mentioning it as as an

14:42

example of one of those professionally

14:44

focused social media sites

14:47

in number two on this slide let's say

14:50

after posting your online Professional

14:52

Profile you receive notification that

14:56

somebody in particular company use your

14:58

profile

15:00

in that situation you're not seeking

15:02

employment even if you're told the

15:04

identity of the company because it's not

15:07

an unsolicited communication from you or

15:10

from the company

15:12

and in number three on this slide what

15:15

if you receive a message from a company

15:16

via LinkedIn or some other site asking

15:20

if you're interested in a new job

15:22

if you don't make a response to the

15:24

message you're not seeking employment

15:28

but if you respond with anything other

15:30

than clear rejection you are seeking

15:33

employment

15:35

and I'll come back to what clear

15:37

rejection looks like

15:39

in 2016 OGE made some modification

15:46

regulation to reflect these more current

15:48

job search situations online and to be

15:52

clear these modernization updates didn't

15:54

change the recusal requirement in

15:56

subpart after they just added and

15:59

revised examples and subpart F to show

16:02

how the seeking employment definition

16:04

applies to online social media Job

16:07

searches

16:08

so if you review the examples that are

16:11

right below the seeking employment

16:13

definition and subproduct you'll find

16:15

all the scenarios

16:17

summarized in this slide reflected in

16:20

those examples next slide

16:24

now in some situations the employees

16:27

subpart us recusal requirement will

16:29

continue such as when the seeking

16:31

employment evolves into negotiating for

16:34

employment and then results in a job

16:36

offer and then an actual agreement for

16:39

employment

16:40

but subpart F also tells us when the

16:43

employee is no longer seeking employment

16:46

such that their recusal requirement ends

16:49

and seeking employment and the related

16:51

recusal ends when

16:53

the employee or prospective employer

16:56

rejects the possibility of employment in

16:58

all discussions at ceased

17:01

or

17:02

two months go by after the employee

17:04

submits the resume and they don't

17:06

receive a response from the prospective

17:08

employer showing interest foreign

17:12

rejecting the possibility of employment

17:15

OGE has recommended in the past and

17:18

continues to recommend that ethics

17:20

officials give employees multiple

17:22

examples of ways that they can respond

17:25

to prospective employers that will

17:27

effectively reject the possibility of

17:29

employment for purposes of subpart f

17:31

such that it's clear the employee

17:33

doesn't have to accuse for matters

17:35

affecting the outside entity and you'll

17:37

find examples of rejection language in

17:40

subpartaf and in the related legal

17:43

advisory do4029

17:48

and here are a couple of those examples

17:51

I will remember your interests if I ever

17:54

decide to leave government

17:56

all my time and attention right now are

17:59

devoted to my government job and I'm not

18:01

in a position to discuss employment

18:05

or the employee could cite ethics

18:07

considerations as a reason that they

18:09

can't talk about employment until they

18:11

leave government

18:13

hopefully these examples help employees

18:15

communicate with prospective Employers

18:17

in ways that they're comfortable with

18:19

and in ways that help them comply with

18:22

subpart f

18:24

but please note that a response that

18:26

merely defers discussion of employment

18:28

until the foreseeable future or until

18:32

after the employee completes an

18:34

assignment affecting the prospective

18:35

employer

18:36

those responses would not constitute

18:39

rejection

18:43

this is a good place to end part one

18:44

since we just talked about

18:48

the winds and when the recusal would end

18:50

in part two we'll take a closer look at

18:53

why the subpart F recusal requirement

18:55

starts where it does at the seeking

18:57

employment stage and why it's so

19:00

important that ethics officials

19:01

encourage employees to come to them as

19:04

early as possible in their job search

19:06

and we'll also talk about the stock act

19:08

notification requirements

19:11

thanks for watching part one of this

19:13

training and I hope you'll join me for

19:15

part two

thank you

0:02

[Music]

0:07

hi I'm Margie Levine assistant counsel

0:10

with the ethics law and policy Branch at

0:12

the office of government ethics we're

0:15

back with the part two of oge's training

0:18

on speaking and negotiating employment

0:22

slide

0:25

I'll continue providing an overview of

0:27

the subpart F requirements including the

0:30

stock act notification requirements

0:33

and we'll talk about how subpart F's

0:36

role as defense helps to prevent

0:38

employees from violating the criminal

0:40

conflicts of interest statute

0:42

and ethics officials equally important

0:45

role in providing advice to employees

0:48

about seeking employment as early and as

0:51

often as you can

0:53

next slide

0:58

we ended part one of this training

1:00

talking about when an employee is

1:02

considered seeking employment

1:04

and that's when the subpart app recusal

1:07

starts

1:08

and when the employee is no longer

1:10

considered seeking employment

1:12

and no longer needs to recuse

1:15

and it's those unsolicited

1:17

Communications by the employee the

1:20

prospective employer or an intermediary

1:23

regarding a job opportunity but some

1:26

part of says starts the seeking

1:29

employment and triggers the recusal

1:31

requirements

1:33

a major ethics concern about these

1:36

one-sided unsolicited Communications

1:38

is that they can quickly turn into

1:41

bilateral back and forth conversation

1:43

about the job opportunity that meets the

1:47

definition of negotiating for employment

1:51

next slide

1:55

negotiating for employment is defined in

1:58

subpart f as discussion or communication

2:01

with another person or such person's

2:04

agent or intermediary mutually conducted

2:08

with a view toward reaching an agreement

2:10

regarding possible employment with that

2:12

person

2:14

the term negotiating is not limited to

2:16

discussions of specific terms and

2:18

conditions of employment in a specific

2:20

position

2:22

so not every two-way conversation is

2:25

going to meet the definition of

2:27

negotiating for employment for example

2:29

going for an informational interview

2:32

where an employee is just learning about

2:34

what a company does with no discussion

2:37

of hiring the employee or what its side

2:40

needs for moving forward with employment

2:42

would not be negotiating for employment

2:46

and there's an example in subpart F that

2:49

confirms this view that an informational

2:51

interview is not speaking or negotiating

2:54

employment next slide

3:00

but where the conversation progresses to

3:02

both sides showing interest in the

3:04

employee coming on board and a

3:07

discussion of some of the terms or

3:08

qualifications of employment

3:11

the employee is likely meeting the

3:13

definition of negotiating employment

3:15

whether the official job interview has

3:17

happened or not

3:19

and if the employee meets the definition

3:21

of negotiating for employment they're

3:24

now in criminal statute territory

3:27

they're in 208 land

3:29

and they could face criminal

3:31

consequences for failing to recuse for

3:34

matters affecting the financial

3:36

interests of their prospective employer

3:39

next slide

3:43

for your reference the relevant part of

3:46

208 regarding negotiating for employment

3:49

is on this slide

3:50

208 prohibits employees from

3:53

participating in matters that will

3:55

affect their own Financial interests as

3:58

well as the financial interests of

4:00

others that are imputed to them

4:01

including a prospective employer with

4:04

whom you are negotiating employment or

4:07

with whom you have an arrangement

4:08

concerning prospective employment

4:11

next slide

4:15

and as I mentioned once an employee is

4:18

seeking employment

4:20

it can quickly turn into negotiating for

4:22

employment for example let's say a

4:25

non-federal employer views the federal

4:28

employees Professional Profile on

4:30

LinkedIn or another website

4:32

and then messages the employee to say

4:35

our I.T division is hiring please let us

4:38

know if you're interested in the

4:40

employee responds with a question like

4:43

what kind of work would the job involve

4:46

the employee is now seeking employment

4:48

by giving a response other than

4:51

rejection

4:53

however if the prospective employer then

4:56

responds with a description of duties

5:01

and there's additional back and forth

5:03

about what either side needs in terms of

5:06

qualifications or other employment terms

5:11

or ways the employee could remedy one of

5:14

the missing qualifications

5:19

employee would like

5:21

with lighting for employment at that

5:22

point

5:25

even if they haven't covered all the

5:28

terms of employment

5:29

and they haven't actually sat down for a

5:31

formal job interview yet

5:34

you'll find a couple of examples in

5:36

subpart F right below the definition of

5:39

seeking and negotiating employment that

5:42

aim to clarify when seeking becomes

5:44

negotiating

5:46

but in a real life job search it's not

5:49

always easy to tell when the

5:51

conversation moves from just the seeking

5:53

employment stage to the negotiating

5:55

stage

5:56

and so employees may unknowingly enter

5:59

criminal statute territory in a matter

6:02

of words

6:04

and that's really the whole point of the

6:06

subpart after accusal to address this

6:08

major ethics issue of seeking becoming

6:11

negotiating in a matter of words

6:14

what does the product do

6:16

it imposes the same recusal requirements

6:19

that 208 imposes for negotiations and

6:22

arrangements for employment but earlier

6:24

in the employee's job search process the

6:28

recusal starts at the seeking stage

6:31

and for that reason the subpart F

6:34

recusal requirement is like offense

6:38

designed to prevent employees from

6:40

veering into two weight lands and

6:42

violating 208

6:47

next slide

6:49

[Music]

6:52

there are a few parts of subparatus

6:54

summarized on this slide that may impact

6:57

an employee's recusal requirement under

6:59

subpart F but they don't come up that

7:01

often so I'll mention them only briefly

7:04

for your awareness

7:05

there is a limited exception to the

7:08

subpart F recusable requirement which

7:10

can be found in 2635 604 A2

7:15

and according to that exception where an

7:18

employee participates in policy or

7:20

regulatory matters or other matters of

7:22

general applicability that would affect

7:25

the prospective employer's Financial

7:27

interests the employee May participate

7:30

in those matters if

7:31

the employees only communication with

7:34

the prospective employer has been to

7:36

submit a resume or job proposal

7:39

and the prospective employer has not

7:42

responded with an indication of interest

7:45

in employment discussions

7:47

because this is a limited exception

7:49

meaning it doesn't apply to specific

7:52

party matters and it would only apply

7:55

where an employee works on particular

7:57

matters of general applicability and

8:00

they haven't heard back from the

8:01

prospective employer after sending the

8:03

resume it's not going to come up often

8:06

and it's not something to focus on when

8:09

you train an invite and advise employees

8:13

um what should be emphasized in your

8:16

advice is that employees come to you as

8:19

soon as they're seeking employment or

8:21

even earlier as we discussed in part one

8:24

when they're considering starting a job

8:26

search and that way you can advise them

8:28

on whether they've triggered the subpart

8:31

effort usable requirement and then as

8:33

you learn more about their situation

8:35

it's possible that their facts need this

8:39

exception

8:41

regarding the second bullet point on the

8:43

slide subpart F provides agencies with

8:46

some discretion regarding how the

8:48

recusable requirement plays out in two

8:51

specific situations first if an employee

8:54

is materially materially impaired from

8:57

doing their job as a result of the

8:59

subpart F recusable requirement the

9:02

agency can determine that the employee

9:04

needs to take annual leave or leave

9:06

without pay

9:07

or get reassigned and you can learn more

9:10

about this area of discretion in section

9:14

2635 604d

9:18

and the second situation is where the

9:20

employee is no longer negotiating for

9:22

employment because the job offer wasn't

9:25

ultimately extended or for some reason

9:28

the negotiations

9:30

started but fell through in that

9:32

situation the agency has the discretion

9:35

to extend the subpart of recusal to

9:38

whatever period of time makes sense in

9:39

that situation and to learn more about

9:42

that area of discretion you can look at

9:45

section 2635 606.

9:49

finally the product has a section on

9:52

waivers and authorizations which if

9:55

granted would waive or authorize the

9:57

employee to participate in matters

9:59

affecting the prospective employer

10:01

in that section on waivers and

10:03

authorizations is 2635 605 if you want

10:07

to learn more I would note

10:10

that the authorization would only be

10:11

possible when seeking employment not

10:14

when negotiating employment

10:16

and the employee would need to meet the

10:18

authorization process and standards of

10:20

2635 502 d

10:23

and a 208 waiver would only be possible

10:26

for negotiating not seeking employment

10:29

and would have to meet the waiver

10:31

standards of 208p1 or B3

10:37

next slide

10:43

the stock act requirements are the

10:45

second component of subpart F I talked

10:47

at length about the first component of

10:49

subpartup the recusal requirements

10:52

back the

10:56

[Music]

10:59

12 and modified in 2013.

11:03

among other things it imposes two

11:05

notification requirements on employees

11:08

who file a public Financial disclosure

11:10

report OGE form 278 and who are

11:14

negotiating or have an agreement for

11:17

future employment or compensation with a

11:19

non-federal entity

11:21

and when OGE amended subpartif in 2016

11:25

it added these two stock act

11:28

notification requirements to subpart f

11:31

and the two notification requirements

11:33

are on this slide and they provide that

11:36

anyone who is a public 278 Filer and who

11:40

is negotiating or has an agreement for

11:43

future employment or compensation with a

11:45

non-federal entity must notify their

11:48

ethics official of the negotiation or

11:50

agreement within three business days of

11:53

the start of the negotiation or

11:55

agreement

11:57

and the public filer must also notify

11:59

their ethics officials of their recusal

12:01

requirement when there's a conflict of

12:04

interest or appearance of a conflict

12:06

with the non-federal entity identified

12:08

in the notification

12:10

the notification must be in writing and

12:13

signed by the public Filer and it must

12:15

include the name of the prospective

12:17

non-federal employer or employers

12:20

the date on which the negotiation or

12:23

agreement started and for further

12:26

information on these stock act

12:28

requirements you can refer to two legal

12:31

advisories that OG issued OA 1201 and La

12:37

1306 and those legal advisories suggest

12:40

a format for the required notifications

12:43

that agencies can use

12:46

separate F requires that this these

12:49

notifications be sent to the Deo or

12:52

another ethics official so note that the

12:55

public filer does not need to send this

12:57

notification to his supervisor nor is

13:00

the ethics official required to send

13:02

this notification to the employee

13:04

supervisor

13:06

that said and this is true of the

13:09

visual requirements the public filer

13:12

must do whatever is necessary to carry

13:15

out the recusal if if they have a

13:18

recusal and practically speaking

13:21

notifying the supervisor or colleagues

13:23

may be necessary to carry out the

13:25

recusal

13:27

next slide

13:34

I want to highlight what I think are the

13:37

most noteworthy aspects of the stock act

13:39

notification requirements particularly

13:42

in terms of how they differ from the

13:44

subparta retrieval requirements

13:47

I have also provided you with the chart

13:50

um as a handout and on the next slide

13:53

that compares side by side these aspects

13:57

of the stock act requirements and the

13:59

subpart after Cuba requirements so feel

14:01

free to look at that chart now as I go

14:04

through this slide because this slide

14:06

covers the same material as the chart

14:10

so we know that the subpart F recusal

14:12

requires employees to recuse immediately

14:15

for matters affecting the prospective

14:17

non-federal employer once you are

14:20

seeking employment with them

14:22

stockx notification requirements are in

14:24

some ways narrower in their application

14:27

than the subpart f recusal

14:30

first the stock act requirements apply

14:32

only to public filers and that does

14:34

include political and career public

14:36

filers

14:37

whereas the seeking employment recusal

14:40

applies to all executive branch

14:42

employees regardless of their filing

14:44

status

14:46

the stock act requirements and the

14:48

subpartup for cusal both apply to

14:50

non-federal entities so they're the same

14:52

in that respect

14:53

but the notification requirements do not

14:55

get triggered by seeking employment

14:57

actions rather they get triggered by

15:00

only negotiations or agreements for

15:02

employment and and this is the most

15:05

striking difference between the stock

15:07

act requirements and the subproduct for

15:09

accusal the notification requirements

15:11

apply only to negotiations or agreements

15:14

for future employment or compensation

15:17

for personal services and here future

15:20

means

15:21

starting after the employee leaves

15:24

government service in other words the

15:26

job that the employee is negotiating for

15:28

needs to start after the employee's

15:31

federal employment ends or the

15:33

compensated Services have to be rendered

15:36

entirely after termination of federal

15:39

employment in order for these

15:41

notification requirements to be

15:42

triggered

15:44

on the other hand you'll recall that the

15:46

seeking employment recusal applies to

15:48

both future post-government employment

15:52

and employment that happens at the same

15:54

time as the employee's federal

15:56

employment

15:57

so if a public filer is negotiating with

16:00

a local University to teach a class

16:03

and the public filer will will do this

16:05

teaching concurrently with their

16:07

government job they don't have to file

16:09

these stock act notifications

16:11

but note they would still be subject to

16:13

the subpart F recusal requirement and

16:16

208 and they might also be subject to

16:19

outside earned income limitations or the

16:22

outside earned income ban and

16:24

limitations on teaching speaking and

16:26

writing in 807 of the standards of

16:28

conduct among other rules and one of the

16:32

legal advisories I mentioned La

16:35

1306 discusses some of these other

16:38

ethics restrictions further

16:42

you'll also notice that the stock act

16:44

requirements applied to Future

16:46

employment or compensation and you may

16:49

recall that the subpart F recusal and

16:52

that related definition of employment

16:54

don't mention compensation

16:57

what the added reference to compensation

17:00

in the stock act rules does is it

17:03

signals the public filers that if you

17:06

enter into any sort of agreement to

17:07

provide services to someone after you

17:10

end your government employment and your

17:13

services will be compensated even if you

17:16

don't consider the person for whom

17:18

you'll provide the services to be your

17:19

employer maybe they're more of a client

17:22

you'll still have to file the stock act

17:24

notifications for example let's say

17:28

you're going to open your own event

17:30

planning business and you enter into an

17:32

agreement to put on an event for a

17:34

company after you leave government

17:37

and you consider the company to be a

17:39

client so you don't view this to be an

17:41

arrangement for employment

17:44

but that's an agreement for compensation

17:46

to provide services after you leave the

17:48

government so you'd have to file the

17:50

stock act notifications

17:53

requirement would also apply in that

17:56

scenario as soon as you start reaching

17:58

out to your event planning clients for

18:01

potential work

18:02

if the client's financial interest would

18:05

be affected by your government work

18:09

finally regarding timing of the stock

18:11

Act

18:14

the public filer technically has three

18:16

business days from the start of the

18:18

negotiation or agreement for future

18:20

employment or compensation to file the

18:22

no the notifications

18:25

and the filer must file the recusal

18:28

statement whenever they believe there is

18:29

a conflict or appearance of a conflict

18:31

however when OTE added the stock act

18:35

requirements to support us in 2016.

18:39

OTE included language in the regulation

18:42

allowing and encouraging public filers

18:44

to get the stock act notice in as early

18:47

as possible and prior to starting to

18:49

negotiate for employment

18:51

so the filer can file the negotiation

18:54

notice before they start negotiating

18:57

and they can file the recusal statement

18:59

before they have a conflict or

19:01

appearance of a conflict with a

19:03

non-federal entity they're not required

19:05

to file this Advanced notification but

19:08

they can

19:09

and that advanced notification continues

19:12

to satisfy the Stacked act notification

19:15

requirements once negotiations actually

19:17

begin or an agreement for employment is

19:20

reached they don't employees don't need

19:22

to file a subsequent notification

19:25

provided that the non-federal entity's

19:27

name is listed in the advanced

19:29

notification and the employee gave an

19:32

estimated date of negotiation

19:37

these Advanced notification Provisions

19:39

in the stockx section of subparta are

19:43

well are well aligned with the other

19:45

part of subpart f the seeking employment

19:48

recusal requirements because both parts

19:51

push for early completion of the

19:53

requirement you have to recuse as soon

19:56

as you start seeking employment before

19:58

the negotiation stage and you're

20:00

encouraged to file the stock act

20:02

notifications earlier than the

20:04

negotiation stage to help prevent

20:07

employees from violating to await the

20:09

criminal conflicts of interest statute

20:11

and to prevent non-compliance with the

20:13

stock Act

20:15

and so in that sense the fence runs

20:18

through all of subpart F both the

20:20

recusal component and the stock act

20:22

section and you as ethics officials play

20:25

a key role in building and supporting

20:27

that preventative protective fence by

20:30

giving advice and training about subpart

20:32

F early and often particularly because

20:35

as we discussed the seeking employment

20:38

situation where an employee or

20:40

prospective employer makes that

20:42

unsolicited communication about a job

20:45

can quickly in a few words turn into a

20:49

two-party meeting of the minds to bring

20:52

to bringing them on board conversation

20:55

that crosses to the other side of the

20:57

fence and triggers the criminal statute

20:59

and your role in counseling employees to

21:02

come to you as early as possible in

21:04

their job search for guidance

21:07

and to recuse before the negotiation

21:09

stage and to get their note their

21:12

notifications in well before negotiating

21:14

is critical

21:17

next slide

21:20

this is the chart I mentioned that

21:22

highlights the main differences between

21:25

the subpart after cubicle requirement

21:27

and the stock act notification

21:29

requirements

21:30

next slide

21:34

and this concludes our two-part review

21:36

of subpart F and its two components the

21:39

recusal requirement and the stock act

21:41

notification requirements

21:43

should you have any questions about

21:45

subpart app please feel free to get in

21:48

touch with me or with your agency's OGE

21:50

desk officer thank you for watching this

21:53

training

hi I'm Margie Levine assistant counsel

0:08

with the ethics law and policy Branch at

0:10

the office of government ethics and I

0:12

appreciate you joining me for the

0:14

seeking and negotiating employment

0:15

debrief

0:17

in this debrief which will be divided

0:19

into two parts I'll walk through several

0:21

exercises that involve applying the

0:24

requirements and subpart F and that will

0:27

hopefully help you in your work advising

0:30

and training employees on subpart apps

0:33

this debris session is a follow-up to

0:36

the two-part training session on seeking

0:38

and negotiating employment that's

0:40

available for viewing on the IG library

0:44

and it's part of the materials you

0:47

receive for this debrief and just as

0:49

that presentation is geared towards

0:51

newer ethics officials or those who are

0:54

newer to subpart f so are these

0:56

exercises

0:57

watching that presentation should help

0:59

you in completing these exercises and I

1:02

will include some of those slides in

1:04

this debrief to help remind us of the

1:06

subproduct requirements I'd also

1:08

recommend having subpart F of the

1:10

standards of conduct handy as you and as

1:13

we go through these exercises

1:16

next slide

1:21

slide is from the related presentation

1:23

on seeking negotiating employment and

1:27

I'm including it here to remind us that

1:29

there are two components to subpart F

1:30

the recusal requirements which comes

1:33

from 18 USC 208 and the impartiality

1:37

regulation and the notification

1:39

requirements which come from the stock

1:42

act and we'll talk about each component

1:44

in this debrief and in the exercises

1:46

next slide

1:50

I also want to remind us of what the

1:53

recusal requirement is under subpart f

1:56

an employee who is seeking employment

1:59

with a non-federal entity must recuse

2:01

from particular matters that to the

2:04

employee's knowledge affect the

2:06

financial interests of the prospective

2:08

employer next slide

2:13

let's start the exercises I'll read

2:16

exercise one

2:17

you are an Ethics official at the

2:19

Department of Transportation Dot

2:22

a DOT employee contact you because

2:25

they're thinking about looking for other

2:27

jobs

2:28

and they remember learning at a training

2:30

that they have to follow certain ethics

2:32

rules when job searching but they don't

2:34

recall the specifics they ask you for

2:37

more information and specifically

2:39

whether they should avoid pursuing job

2:41

opportunities from certain entities that

2:44

are regulated by dot how would you

2:46

advise them

2:49

I would note that this is a pretty

2:51

open-ended question the employee isn't

2:55

giving you many facts to to analyze they

2:58

apparently haven't started their job

2:59

search they want to know what are the

3:02

ethics rules regarding Job searches

3:07

regarding their answering their

3:10

questions how would you advise them what

3:12

are the things they must know about the

3:14

ethics restrictions regarding their job

3:17

search

3:18

if you're working through this exercise

3:19

while viewing this recording I'd

3:22

recommend pausing the video and giving

3:24

yourself a moment to jot down what you

3:26

think are the critical points that

3:28

employees should know about the ethics

3:30

requirements regarding Job searches and

3:32

on the next slide I'll give you a list

3:34

of the key items I would mention to this

3:37

employee about their ethics requirements

3:39

next slide

3:45

here are the key things employees must

3:47

know about their ethics requirements

3:49

under subpartaf

3:51

ly you should summarize the subpart

3:53

expertise requirement

3:56

Define seeking employment per the

3:58

subproduct definition and it's helpful

4:01

to give examples of what actions or

4:03

words amount to seeking employment

4:06

and because the the dot employee brought

4:10

this up it's important to clarify that

4:13

the subpart F recusal limits government

4:17

work rather than their job search so

4:19

this employee is not prohibited under

4:22

subpart F from seeking employment with

4:25

entities regulated by the Department of

4:28

Transportation rather the question under

4:31

support f is this threshold question in

4:34

the fourth bullet point whether the

4:36

employee has to recuse from certain

4:38

matters in their government work because

4:41

those matters affect the financial

4:42

interests of the entities they're

4:44

seeking employment with

4:47

finally you should note that if they're

4:50

a public filer there are additional

4:52

notification requirements that may apply

4:55

to them relating to their job search and

4:57

those are the stockx notification

4:59

requirements

5:01

next slide

5:06

let's move on to exercise two so let's

5:09

say you provide these these must knows

5:12

these critical subpart F requirements

5:16

and the so now the Department of

5:18

Transportation employee has the basics

5:21

about their ethics requirements and they

5:23

come back to you with more information

5:25

about their agency work and their job

5:27

search plans so here's what the employee

5:30

tells you I'm looking for jobs with car

5:32

manufacturers where I could be involved

5:35

in developing and improving automated

5:37

automated vehicle technology I currently

5:40

work in Dot's national highway traffic

5:43

safety administration but my work at the

5:46

agency does not involve self-driving

5:47

Vehicles so I don't think my job search

5:50

will create a recusal requirement do you

5:52

agree

5:53

how would you advise them

5:56

well to answer their question of whether

5:58

they have a recusal requirement what

6:00

information do you need or what

6:03

questions do you need to ask and answer

6:05

next slide

6:10

to determine if the employee has a

6:12

recusal requirement under subpart F

6:14

there are basically two questions you

6:15

need to ask and answer first is the

6:18

employee seeking employment

6:20

and does the employee work on matters

6:23

that affect the financial interests of

6:25

the prospective employers

6:27

next slide

6:32

do we have enough information to answer

6:34

those two questions based on what the

6:36

employee has told us so far

6:38

the answer is no

6:40

we don't know what actions the employee

6:42

has taken or will take to explore job

6:45

opportunities and whether their actions

6:48

meet the definition of seeking

6:49

employment

6:50

and regarding the threshold question of

6:52

whether the employee works on matters

6:54

that would affect the prospective

6:56

employers Financial interests

6:58

all we know is that

7:00

the employee does not work on matters

7:02

involving self-driving vehicles

7:04

but what does he work on at the agency

7:08

and does that work affect the

7:10

prospective employers

7:12

so in terms of how you would invite

7:13

advise this employee

7:16

you'll need to let them know that you

7:19

don't have enough information

7:20

uh to address their question you have

7:23

some follow-up questions uh regarding

7:26

whether they're seeking employment and

7:28

the second threshold question of whether

7:31

their work affects the prospective

7:33

employer's Financial interests

7:35

for the first question whether they're

7:37

seeking employment an exercise for we're

7:40

going to look at potential actions that

7:42

this employee might take in their job

7:44

search and whether those actions meet

7:46

the definition of seeking employment

7:48

the first let's look at exercise

7:52

deals with this other question of what

7:54

they work on

7:56

and whether that work affects the

7:58

prospective employers Financial

7:59

interests

8:01

is keep in mind and this is why it's a

8:03

threshold question if the employee does

8:06

not work on matters that affect the

8:08

prospective employers Financial

8:09

interests the employee won't have a

8:11

recusal requirement and you won't need

8:13

to get into the weeds of whether the

8:15

employee has taken actions that amount

8:18

to seeking employment

8:19

next slide

8:25

so you're going to go back to the

8:26

employee and ask them questions

8:29

to help you determine whether they work

8:31

on matters that affect the financial

8:33

interests of the car manufacturers

8:35

they're looking to work for

8:38

this slide gives you two examples of

8:40

what the employee might tell you they

8:42

work on so let's say the employee comes

8:45

back to you and says

8:47

I review public complaints submitted to

8:49

dot about vehicle defects and collisions

8:52

I developed the related facts and I

8:55

prepare incident reports that help the

8:57

agency determine its response to the

9:00

defect or collisions

9:03

if this is what the employee works on

9:05

and we know they're looking for jobs

9:07

with car manufacturers

9:09

what are your thoughts on whether their

9:11

work may affect the car manufacturer's

9:13

Financial interests

9:15

it seems likely that the employee's

9:18

complaint work would involve matters

9:20

affecting or involving the car

9:23

manufacturers

9:24

that they may be applying to jobs with

9:28

and so

9:30

um

9:30

you know you could ask a follow-up

9:33

question to the employee to determine

9:36

whether the prospective employers

9:38

Vehicles could be implicated in the

9:42

employees or affected by the employee's

9:45

complaint work

9:47

I'll read the second bullet point now

9:50

I oversee the nhtsa's contracts with

9:54

software companies for the provision of

9:56

software and related services and

9:58

products used by NH nhtsa Personnel in

10:02

their day-to-day work

10:06

if the employee's work involved

10:07

overseeing the agency's contracts for

10:09

its internal I.T systems rather than the

10:12

substantive Transportation related work

10:14

of the agency do you think the

10:16

employee's work would affect the

10:18

companies the employee will be applying

10:19

to

10:22

if the prospective employers are car

10:24

manufacturers it's unlikely that the

10:26

employee's I.T work involving internal

10:29

I.T systems would affect car

10:31

manufacturers

10:36

it's important though to you know not

10:40

just limit yourself to the facts that

10:42

the employee provides you you should ask

10:45

follow-up questions and stay focused on

10:47

what the employee does in his agency

10:49

work and how that could affect the

10:51

prospective employer and you know if you

10:53

have any doubts about the the impact on

10:57

the prospective employer definitely

10:59

raise that or then ask questions and

11:03

there's a lot more that we could say

11:04

about whether a particular matter has an

11:07

effect on an outside company and that

11:09

question really requires its own

11:10

training

11:11

I would note that there are materials in

11:14

the ieg library

11:16

um on whether a matter has a direct and

11:18

predictable effect on the prospective

11:20

employer for purposes of determining

11:22

whether an employee who's seeking

11:24

employment has recusal requirements

11:26

um and that job aid is called seeking

11:28

participant guide and is associated with

11:32

a an older training that on seeking

11:36

employment Truth or Fiction that is no

11:38

longer up to date but that job aid

11:41

seeking participant guide should should

11:43

be useful guidance for you

11:45

now in the exercises you received

11:48

there's an exercise three part two we're

11:51

not going to talk about that right now

11:52

but hold on to it we'll talk about it

11:54

later in the debrief next slide

12:00

let's Circle back to the second question

12:02

we need to address for this employee to

12:05

figure out if they have a recusal

12:06

requirement which is whether their job

12:09

search actions amount to seeking

12:10

employment

12:12

in the related training on seeking

12:13

employment I included this slide on when

12:16

seeking employment begins generally if

12:19

the employee reaches out to a

12:20

prospective employer or intermediary

12:22

about possible employment with the

12:25

prospective employer that starts the

12:27

seeking employment and triggers the

12:28

recusal if it's the prospective employer

12:31

or prospective employer's intermediary

12:33

that initiates contact with the employee

12:36

regarding possible employment then the

12:39

employee would be seeking employment if

12:41

the employee makes a response other than

12:42

rejection those are the main takeaways

12:45

about what seeking employment means and

12:47

now let's look at examples of job search

12:50

actions that the Department of

12:52

Transportation employee might take and

12:54

we'll talk about whether those actions

12:55

amount to seeking employment or not next

12:58

slide

13:02

so an exercise for there are examples of

13:06

potential job search actions that the

13:09

dot employee might take and I'll read

13:12

the first example

13:13

the dot employee sends the resume to a

13:17

self-driving car company

13:18

are they seeking employment with that

13:20

company that they send the resume to

13:23

yes sending their resume is seeking

13:26

employment because it meets the

13:27

regulatory definitions of seeking

13:30

employment they're making an unsolicited

13:32

communication to a person regarding

13:34

possible employment with that person

13:37

next slide

13:41

in the second example

13:43

the dot employee emails their friend who

13:46

works at a self-driving car company and

13:48

asks that the friend is aware of any job

13:50

openings at the company

13:52

the dot employee does not attach a

13:54

resume

13:55

does this communication amount to

13:57

seeking employment

13:59

does it matter that the employee didn't

14:01

send their resume

14:04

the employee appears to still meet the

14:06

definition of seeking employment they

14:08

made an unsolicited communication to a

14:11

prospective employer regarding possible

14:13

employment so even if the employee

14:15

didn't send a resume they're they're

14:17

implying that they want to come work for

14:19

the company it will depend on the facts

14:21

and what the email says but if the

14:23

employee is indicating their interest in

14:26

being considered for employment you

14:28

should consider that to be seeking

14:30

employment

14:33

next slide

14:37

I'll read the third example

14:40

the dot employee posts on social media

14:42

that they're looking for jobs with

14:44

companies involved in the development of

14:46

self-driving cars and they'd appreciate

14:48

hearing from contacts about any

14:50

opportunities they attach their resume

14:52

to the Post

14:54

what do you think is the employee

14:56

seeking employment

14:58

I should clarify that in this example

15:00

the employee is posting to their social

15:02

media profile to no one in particular

15:04

other than their full friend or contact

15:06

list

15:09

the answer is no this is not seeking

15:11

employment because the employee's social

15:14

media profile isn't targeting any one

15:16

prospective employer it's not an

15:18

unsolicited communication with a

15:21

particular prospective employer and

15:24

because they're not sending the resume

15:26

to anyone in particular they're not

15:27

seeking employment

15:29

next slide

15:33

so we've completed our discussion of the

15:36

first three examples of whether the dot

15:38

employs job search actions or words meet

15:41

the definition of seeking employment

15:42

I'll stop part one of the debrief here

15:45

and in part two we'll pick back up with

15:48

more examples of whether certain actions

15:50

or Communications meet the definition of

15:53

seeking employment but in the next few

15:55

examples the actions or Communications

15:57

are ones initiated by the prospective

16:00

employer

welcome to part two of the debrief on

0:07

seeking and negotiating employment

0:10

in the second part we're continuing to

0:12

look at the examples of whether certain

0:14

actions or Communications by the

0:17

Department of Transportation employee

0:19

meet the definition of seeking

0:21

employment

0:22

but in the next few examples the actions

0:25

or Communications are ones initiated by

0:28

the prospective employer

0:29

next slide

**Seeking Employment Examples**

0:34

so let's look at example four

0:37

after seeing the dot employees social

0:40

media post indicating interest in jobs

0:43

with self-driving car companies

0:45

and the employee's resume a

0:47

representative of company a a

0:50

self-driving car company emails the dot

0:53

employee to ask about their

0:55

qualifications

0:56

the dot employee does not respond

0:59

what do you think is the employee

1:01

seeking employment

1:04

the answer is no if a company reaches

1:07

out to the employee and says I saw your

1:09

post that is considered an unsolicited

1:11

communication to the employee

1:13

and the employee will be seeking

1:16

employment if they respond with anything

1:18

other rejections other than rejection

1:20

but since the employee here didn't

1:23

respond they're not seeing him seeking

1:25

employment next slide

1:31

I'll read the fifth example

1:33

the employee and their dot work

1:35

interacts with company a

1:38

during those interactions company a says

1:41

it would love to hire the employee for

1:43

specific position

1:45

the employee responds by asking if the

1:47

position would involve work on

1:49

developing self-driving cars

1:53

do you think the employees seeking

1:55

employment here

1:57

yes

1:58

this is seeking employment because

2:00

company a made an unsolicited

2:02

communication to the employee and the

2:05

employee's response is to ask a question

2:07

about the employment opportunity rather

2:10

than to reject it

2:12

next slide

2:16

I'll read the sixth example

2:19

so it's the same example as number five

2:22

above

2:23

but the employee response so in other

2:26

words that the employee works with

2:29

company a and his agency work and

2:31

Company a says it would love to hire the

2:33

employee

2:35

but this time the employee responds that

2:37

because of their dot work involving

2:40

company a they cannot pursue the job

2:42

opportunity now but they will be in

2:45

touch after the matter is over and

2:47

that's the matter involving company a

2:50

what do you think is the employee

2:52

seeking employment

2:55

the answer is yes under subpart apps

2:57

they are seeking employment simply

2:59

deferring the decision about the job

3:01

opportunity until after the employee

3:03

completes an assignment affecting the

3:06

prospective employer is not a rejection

3:08

of the opportunity so that response

3:11

would amount to seeking employment under

3:12

subpart f

3:14

next slide

3:18

so we've completed the examples that

3:20

deal more with the prospective employers

3:22

actions and the employee's response in

3:25

terms of whether those actions and

3:27

responses meet the definition of seeking

3:29

employment next slide

3:34

so what response by the employee would

3:37

effectively reject the possibility of

3:39

employment

3:41

and what actions or non-actions by the

3:43

prospective employer would effectively

3:46

end the seeking employment refusal under

3:48

subpart F let's look at example seven

3:51

through nine on this slide

3:53

example seven

3:54

the employee and their dot work

3:56

interacts with company a

3:59

company a tells the employee it would

4:02

love to hire them

4:03

the employee responds that for ethics

4:05

reasons they can't talk about employment

4:07

until they leave government

4:09

does the employee's response effectively

4:12

reject the possibility of employment

4:16

yes

4:18

so the employee is not considered

4:20

seeking employment if they give that

4:22

response and in the related training on

4:25

seeking negotiating employment I gave

4:27

you other examples of statements that

4:30

effectively end the seeking employment

4:33

like I've determined that I won't be

4:35

able to pursue this job opportunity I

4:37

will remember your interest if I ever

4:39

decide to leave government

4:42

next slide

4:47

example eight

4:49

after the dot employee sends their

4:51

resume to a self-driving car company

4:54

two months go by with no response from

4:57

the prospective employer indicating

4:58

interest in employment discussions

5:02

so we know that sending a resume to a

5:04

company is seeking employment

5:06

so the employee is seeking employment as

5:09

soon as they send the resume

5:11

but after two months go by with no

5:13

response from the prospective employer

5:15

is the employee seeking employment

5:18

under subpart asks the answer is no the

5:20

employee is no longer seeking employment

5:22

when those two months go by with no

5:24

response from the prospective employer

5:26

and that

5:28

the provision in support F that explains

5:32

this is 2635 603 B2

5:36

double little I next slide

5:42

I'll read example nine

5:44

the dot employee interviews with a

5:47

self-driving car company and gets called

5:49

back for a second interview

5:51

after the second interview

5:53

the company informs the dot employee

5:55

that they were not selected for the

5:57

position what do you think

5:59

does that rejection by the prospective

6:01

employer and the seeking employment

6:03

recusal

6:05

well technically yes

6:06

the employee is not seeking employment

6:08

within the meaning of subprod f after a

6:11

prospective employer rejects the

6:13

possibility of employment and that can

6:15

even find that in 2635 603 be to little

6:20

I next slide

6:23

amen

6:25

but this is one of the situations where

6:27

subpartaf provides agencies with some

6:30

discretion regarding how the recusal

6:32

plays out

6:34

specifically where the employee is no

6:36

longer negotiating for employment

6:38

because they didn't ultimately get the

6:40

job offer or the negotiations started

6:43

but fell through the agency has this

6:46

discretion to require the employee to

6:48

continue recusing even though they're

6:50

technically no longer seeking employment

6:52

on the ground that after considering the

6:55

facts and factors listed in 2635 502 d

7:00

the concern that a reasonable person may

7:02

question the Integrity of the agency's

7:04

decision-making process outweighs the

7:07

government's interest in the employee's

7:08

participation in the purchase in the

7:10

particular matter and you can find out

7:13

more in section 2635 606 B

7:17

so in example nine the employee is no

7:20

longer seeking employment because they

7:22

were not selected for the positions but

7:24

the agency could use its Discretions

7:26

under Section 2635 606b to decide that

7:31

nonetheless the employee needs to

7:32

continue recusing and that's why I put a

7:35

star next to the x

7:39

so just to recap what we've done so far

7:42

our fictional dot employee initially

7:45

asked us a very broad question in

7:46

exercise one about what their ethics

7:49

requirements are regarding Job searches

7:52

in response we've given the employee an

7:54

overview of subpart F and the

7:56

requirements the employee came back to

7:59

us with more information about their job

8:01

search and exercise too

8:03

but it really wasn't enough information

8:05

to help them determine whether they'll

8:08

have a recusal requirement under subpart

8:10

F in exercise three we asked for and

8:14

receive more information about what they

8:15

work on at their agencies within Dot

8:19

and we discussed how that works may

8:21

affect their prospective employers and

8:23

then in exercise four we looked at

8:26

examples of how their job search actions

8:28

may go and whether those actions and

8:30

exchanges amount to seeking employment

8:32

so hopefully this gives you practice in

8:35

applying and working through the two

8:37

elements required for the subpart after

8:39

accusal and it also gives you practice

8:43

in addressing an employee question that

8:46

is missing some of the information that

8:48

you need to advise the employee on

8:50

subpart F next slide

8:56

before we move on to the stock act

8:58

exercises let's go back to exercise

9:00

three part two

9:02

if you recall when I gave you examples

9:04

in exercise three of what the dot

9:07

employee might work on where the

9:09

employee was looking for jobs with a

9:11

self-driving car manufacturer

9:13

the examples I gave were specific party

9:15

matters so matters involving named

9:18

parties

9:19

the complaint review work was one of the

9:22

description of Duties and then the

9:25

software contract oversight work

9:28

under subparagraph if the employees

9:31

complaint review work or a software

9:32

contract work affects the prospective

9:34

employers Financial interests with whom

9:36

they're seeking employment the employee

9:38

has to recuse from such matters

9:40

so what would happen though if the

9:43

agencies its employees work for the

9:46

agency

9:46

involves matters that do not have

9:50

involved specific parties like policy

9:52

and Regulatory matters so let's say and

9:55

now I'm reading this Slide the employee

9:57

says I develop policies regulations and

10:02

standards for automated drive driving

10:04

system safety

10:05

such policy and Regulatory work would

10:08

likely affect a car manufacturer as part

10:11

of a discrete and identifiable class of

10:13

persons

10:14

so does that mean that the employee will

10:16

have to recuse from that work

10:18

he would think so right

10:21

but subpart F does draw a distinction

10:24

between specific party matters and

10:26

particular matters or General

10:28

applicability in terms of the recusable

10:30

requirements

10:31

that said it's not much of a difference

10:33

that this distinction draws there's a

10:37

very limited exception to the subpride

10:40

app refusal requirement if the

10:42

employee's work involves matters of

10:43

General applicability you can find it at

10:46

2635 604 A2 and per that exception where

10:51

an employee participates in policy or

10:53

regulatory matters or other matters of

10:55

general applicability that would affect

10:57

the prospective employer's Financial

10:58

interests

11:00

the employee May participate in those

11:02

matters if the employee's only

11:04

communication with their prospective

11:06

employer has been to submit a resume

11:09

and the prospective employer has not

11:11

responded with indication of interest in

11:14

employment discussions

11:16

so this is a pretty limited exception

11:19

and it's not that you don't have a

11:20

recusal when you work on particular

11:23

matters of general applicability and

11:25

you're seeking employment with someone

11:26

affected by those matters it's just that

11:28

under this exception you technically

11:30

don't have to recuse from such matters

11:32

until you hear back

11:37

next slide

**Notification Requirements**

11:43

all right we are now on to the stock act

11:46

notification requirements which is the

11:48

other component of subprodef besides the

11:50

recusal requirements

11:52

and these are notification requirements

11:55

that apply only to public filers and

11:57

these notification requirements apply if

12:01

the public filer is negotiating for

12:03

future employment

12:04

or compensation with a non-federal

12:06

entity or has an agreement for future

12:09

employment or compensation with a

12:11

non-federal entity so these notification

12:14

requirements technically don't kick in

12:16

at the seeking employment stage they

12:18

only apply to the negotiation and

12:20

agreement stage

12:22

and specifically under these

12:24

notification requirements uh the file

12:27

public filers must notify their ethics

12:30

official of the negotiation or agreement

12:32

within three business days of the

12:34

beginning of the negotiation or

12:36

agreement and they might the filer must

12:39

also notify their ethics official of

12:40

their recusal requirement when there is

12:43

a conflict of interest or appearance of

12:44

a conflict with the non-federal entity

12:49

and the requirements for these

12:51

notifications like that must be in

12:53

writing and

12:54

somewhat those notice

12:57

notice of are discussed in support f as

13:00

well as in several legal advisories that

13:03

OG has issued like

13:05

la-1201 and la-1306

13:08

and they those legal advisories suggest

13:11

a format to use for the notifications

13:13

next slide

**Example A**

13:18

so let's see in exercise five how these

13:20

stock act requirements would play out

13:22

with our Department of Transportation

13:24

employee who wants to work for a company

13:26

that is involved in self-driving cars so

13:30

let's say the employee is a 278 filer

13:33

and they take one of the following job

13:36

seeking steps example a the dot employee

13:40

sends the resume to a self-driving car

13:42

company

13:44

do they have a stock act notification

13:46

requirement regarding this car

13:47

manufacturer

13:49

well we know that the employee is

13:51

seeking employment here because they

13:52

sent their resume so they have a recusal

13:55

requirement

13:57

but technically they're not required to

14:00

file stock act notifications because

14:02

they're not yet negotiating for

14:04

employment

14:05

that said

14:08

Part F and the legal advisories that I

14:12

mentioned public filers are encouraged

14:14

to file the stock act notification and

14:16

recusal statement before negotiations

14:18

have commenced and before an agreement

14:20

of future employment or compensation is

14:23

reached and that's to facilitate

14:25

receiving advice from their ethics

14:27

officials

14:28

and if they choose to file early these

14:31

notifications

14:32

that notification would count

14:35

once the negotiations or agreements have

14:39

been reached as long as the the early

14:42

notice contained everything that the

14:44

notice needs to contain now let's look

14:47

at example B on this slide

14:49

the dot employee emails their friend who

14:52

works at a self-driving car company

14:54

about job openings at the company

14:56

the friend responds that there is a job

14:58

opening but prior work experience with a

15:01

specific technology is required the dot

15:04

employee provides the resume and

15:07

explains prior relevant experience

15:10

do you think under these facts the

15:12

employee would be required to file stock

15:14

act notification

15:16

the answer is yes this exchange appears

15:19

to meet the definition of negotiating

15:20

for employment even though an interview

15:22

hasn't happened yet

15:24

and

15:26

negotiating for employment is defined

15:29

and subparate F just want to point that

15:31

out

15:32

and the employee must file the stock act

15:35

notification of their negotiations with

15:37

the company as we said within three

15:39

business days

15:40

of beginning the negotiations and if

15:44

there's a potential conflict they should

15:46

also file the recusal statement and just

15:49

note that the employee does not need to

15:50

tell their supervisor that they're

15:52

negotiating for employment with this

15:55

self-driving car company unless

15:57

informing their supervisor about the

15:59

recusal is necessary to carry it out

16:02

effectively next slide

**Example C**

16:10

in example C on the slide the dot

16:13

employee isn't going to look for jobs

16:15

with self-driving car companies after

16:17

all instead and now I'm reading example

16:20

C

16:21

the dot employee is a talented

16:23

calligrapher and has informally designed

16:26

friends and families event invitations

16:28

for years

16:30

the employee plans to retire from Dot

16:32

and turn this calligraphy hobby into an

16:35

invitations business

16:37

before retiring the employee will

16:39

contact local businesses and other

16:41

potential clients to negotiate contracts

16:44

to design invitations for their special

16:46

events the employee will not however

16:48

start performing the contract work until

16:51

after retirement

16:53

under these facts will the employee have

16:55

to file a stock act notice

16:58

yes he has to file a stock act

17:00

notification

17:02

and that's because the stock act notice

17:04

requirements are not are

17:07

not applicable only to traditional

17:09

employment situations but also to

17:12

compensation for services to be rendered

17:14

following termination from federal

17:17

government employment so even if the

17:19

employee's efforts here to find clients

17:21

for his invitations business may not

17:23

sound like future employment because

17:25

these would be future clients not

17:28

employers is engagement with these

17:30

potential clients about future

17:32

compensation would be subject to the

17:34

stock act notification requirements

17:37

next slide

17:42

we're now at the last example an

17:44

exercise of the sea brief example D on

17:47

the slide is a variation of example C on

17:49

the previous slide

17:51

so the same it's the same facts I see

17:53

the dot employee will turn his

17:56

calligraphy hobby into an invitations

17:58

business

17:59

but instead of retiring the employee

18:01

will conduct their invitations business

18:03

while still employed by dot outside of

18:06

government work hours and not using

18:07

government resources

18:09

the employee will contact local

18:11

businesses and other potential clients

18:14

to negotiate contracts to design

18:15

invitations for their special events

18:19

so will the employee have to file the

18:22

stock act notification under these

18:24

slightly different facts

18:26

no you won't have to file stock notices

18:29

because the notification requirements

18:32

apply only to negotiations or agreements

18:34

for a future employment or compensation

18:37

for personal services so future here

18:39

means starting after the employee leaves

18:42

government in other words the job or

18:44

work that the employee is negotiating

18:45

for needs to start after the employee's

18:48

federal employment ends or the

18:49

compensated Services have to be rendered

18:52

entirely after a termination of federal

18:54

government in order for these

18:56

notification requirements to be

18:57

triggered

19:02

next slide

**Conclusion**

19:07

we've completed all the exercises in

19:09

this debrief on subpart F and its two

19:11

components the recusal requirement and

19:13

the stock act requirements and I

19:16

appreciate you joining me

19:18

should you have any questions about

19:19

subpart F please feel free to get in

19:21

touch with me or with your agencies OGE

19:24

desk officer thank you