no problemo welcome and thank you for

0:25

standing by at this time all participants are in a listen-only mode during the Q&A session if you would like

0:30

to ask a question you may press star 1 on your phone now I would like to turn the meeting over to mr. Patrick Sheppard

0:36

you made again thanks very much good afternoon and welcome to our outside activities massive open online course

0:42

I'm Patrick Sheppard and I'm very pleased to be joined today by Cheryl came Piasecki oh yeah how's it going

0:47

well good so this is our first session of our two-part massive open online

0:53

course covering outside activities and analyses and the reason we do these as a

0:59

massive open online class because I think outside activities are one of the most complicated areas to advise

1:06

employees they're wide-ranging they requires to consider a lot of rules the

1:11

process is really important it's very easy to run into problems so we really want to make sure that everyone has an

1:17

opportunity to look at an exercise to practice to see how you do and then on

1:23

the Thursday get some feedback about how the exercise went see if we were able to identify all the issues or if there were areas that you

1:30

know you didn't see mm-hmm so that's kind of our our long winded way of saying it's going to be incumbent upon

1:36

you to actually do the exercise we're going to assign you today meaning truly I'm being glib but but truly the point

1:44

is to give you an opportunity to walk through the rather complex analytical process that outside activities presents

1:51

and to give you a chance to practice it and then and then to brief it with us so

1:59

you may have noticed that we have a lot of materials for this class there's not

2:04

just sort of one or two handouts there are a bunch of different documents that you're gonna need to use in order to

2:10

complete the exercise and we've really tried to create some tools to help you we know this is

2:16

challenging we know it's easy to make mistakes when advising on outside activities we know that many of you who

2:22

have prior approval requirements receive a lot of information from your employees to help you do that advice and we want

2:28

to give you the tools to help you analyze that correctly so what we want to do today is walk you through some of

2:33

those tools I'll walk you through the exercise itself and then talk a little bit about outside activities that are

2:40

indeed outside activities meaning done in someone's personal capacity without government sanction and those activities

2:47

that are undertaken with outside organizations as part of someone's official duties this course is the

2:52

outside activities course so the exercise we're going to do will be we will analyze that situation is if that

2:59

person is proposing to do this in in her personal capacity outside of her government capacity but we do want to

3:05

make sure that you're aware that there are options there are ways that you you

3:10

your agency may elect to assign someone to participate with outside organizations in their official capacity

3:16

so we have a lot of documents to get through so we want to get started

3:28

you

4:03

clickable authorities does a fairly good job of accurately summarizing what each

4:10

of the relevant authorities what the elements are in order for you to determine whether or not it could

4:15

potentially pose a problem for the activity that your employer wants to undertake so we do try to give you a

4:22

fairly articulate and very close to the statutory language summary or a regulatory language summary of each of

4:29

these authorities but they are not a substitute for the actual authorities themselves so while this is a job aid

4:36

that's intended to assist you in sort of red flagging things when it comes to

4:41

doing an actual legal analysis of of any you know under any of these particular authorities we would always always

4:48

suggest that you go to the authority itself and make sure that you're using the actual language of the authority and

4:55

not not a summary of it and and to assist you in that the key questions that that are at the far right of the

5:02

document are precisely to try to get at whether or not based on the facts that you have it is likely that the elements

5:10

of that of that authority are going to be met but it gives you an indication of the kind of information you're going to

5:16

need in order to be able to determine at a basic level whether or not you should flag this Authority as potentially being

5:23

in them in implicated absolutely and I think there are a few things that you

5:28

want to keep in mind when you use this document there are some choices that we've made that we think will help you

5:34

ensure that your advice is complete and accurate and one of those things is that we've laid out all the authorities in

5:40

numerical order yes one of the hardest parts about this kind of work is making sure there are advices complete meaning

5:47

that we have considered thoroughly each of the applicable authorities and that we've made an affirmative determination

5:52

that authority isn't going to pose a problem or that it may pose a problem and we've counseled the employee to take

5:59

steps to make sure that problem doesn't become manifest or we found that the problem is so significant that the

6:04

person cannot go through with the activity but we must make that determination for each of the authorities and as you go through the

6:12

exercise we would encourage you to do so in this order so begin the exercise biking

6:17

during weather 18 USC Section 203 may pose a problem and make a determination

6:22

that either this is something that we need to think about and work through or it's definitely not going to pose a

6:27

problem and to not move on until you've made that determination and then proceed to the next Authority in our case

6:33

section 205 through the criminal statutes then through the relevant sections of the the standards of conduct

6:39

and the reason is because there are going to be things that jump out at you you say oh there there may be a problem

6:45

under subpart E for example of the standards but we don't want those salient problems to blind us to some of

6:52

the issues that we we may not see immediately so we want to be want to be very thorough and careful as we go

6:59

through this activities and we'd encourage you to do that in while you're conducting the exercise and we can

7:04

assure you that that's precisely how we're going to do the debrief we are literally going to march you through

7:09

every one of these authorities in the order in which they appear in the table of authorities and we're doing it for

7:16

just that reason because I think that that's the when some of these authorities don't occur

7:22

for us in our portfolio of advice and counsel as much as others do and so

7:27

there is always the risk of completely miss apprehending or just simply not considering an authority in the context

7:36

of a situation where you're able to readily identify the most the most the most obvious potential conflicts or

7:42

standards of conduct issues but those authorities that you don't encounter as

7:47

often and just aren't as familiar with might very well pose at least a risk and

7:52

and and it's harder to identify those without forcing yourself to like actively consider them

8:05

you

9:05

yes so this will be the area that you're able to show your work our our second document here is the outside activities

9:11

analysis sheet and it's gonna look very familiar to you if you have seen the if

9:17

you have taken a look at the table of applicable authorities because this document what it does is it follows the

9:25

format of the applicable authorities document and it allows you some space to

9:31

present your analysis to answer some key questions to indicate the additional

9:36

information you may need so the documents that we have available to us may not answer all of the questions they

9:45

you may need to get some more information for the from the employee and if that's the case we want you to

9:53

note that here so so we're not suggesting that the documents that we provided to you in this document are

10:00

sufficient to answer all of the questions definitively but they may show you areas where you need some additional

10:05

information so we've provided you in this document places to consider each of

10:11

the applicable authorities and we would encourage you to go through those

10:18

through those authorities one at a time indicating whether something is likely

10:23

to be an issue is a risk or is definitely not going to be a problem so

10:30

that's what we're asking you to do between now and the next session which is to go through each of the authorities

10:36

one at a time using the table of applicable authorities and then making your notes here whether you have enough

10:42

information whether you need more information and whether you believe that it's necessary for this person not to do

10:47

the activity to do the activity once we've taken some steps or that it's likely not an issue so we don't have a

10:53

problem and we'll do that for each of the authorities so suppose the next

10:58

question is what is it that we're gonna talk about you know what is our scenario who is our person and what do they want

11:05

to do and in our case we've given you another document and that's a request

11:10

for approval of outside activities and this form I think sure we adapted this

11:16

from an actual agency form yes I believe this is a this is similar to a form if not identical to a form

11:21

that I believe or is based upon a form that I believe HHS currently uses and we

11:27

just adapted it for our purposes we may have scaled it down a little bit but we think it's a fairly complete document

11:34

with respect to the kinds of information that it adds that it asks for yes so we have our employee here Amanda

11:41

Murillo we have some information about her we have her grade her salary the title of her position she's a research

11:47

meteorologist and we have a lot of information about what it is that she proposes to do so starting on on page

11:54

two we can see that this activity is going to involve some teaching speaking and writing as well as service on a

12:00

board those are going to be important facts as we do our analysis we also find

12:06

out that that she's going to learn that she's been invited to work as a

12:12

counselor for the American Meteorological Society so we have a sense that this work is relatively close

12:18

to her job as a meteorologist with the government so that's some information that work and I want to make a note of

12:25

we have some other information about the Society we could probably look them up on the Internet we know it's a

12:31

professional association we know that she's not being compensated or at least she's telling us she's not being

12:37

compensated we know that she will I may

12:44

need to travel for this activity and that the travel be paid in kind and she

12:50

describes some of those benefits so these are gonna be important facts to have as we conduct some parts of our analysis and we have an indication about

12:59

how much time she thinks she's gonna spend doing this work so we'd encourage you to review this information very

13:04

closely keep it close at hand as you go through the analysis worksheet because you're gonna have to come back these

13:09

facts again and again as you're working through each of these each of the authorities they may be may be important

13:17

in different ways so this is really the the request this is the thing that we would receive from an employee who is

13:23

who is seeking advice and that is the the requester outside activities if your agency doesn't have a prior

13:30

approval requirement for outside activities you may have to get this

13:36

information through some other means so it may be necessary for you to follow up

13:42

with an employee they say I'm interested in serving on this board you may have to go back and get a whole lot of information and you can use this request

13:49

form as a possible solution or a possible template or guide for the kinds of information that you should receive

13:56

prior to prior to beginning your analysis process mm-hmm

14:02

and because we're aware obviously that not everybody who is going to engage in this activity works for the Department

14:08

of Commerce or NOAA or the National Weather Service we're not expecting you to do some independent research on what

14:15

a research meteorologist actually does so we've tried to give you a at least a

14:20

bulleted list of some of the primary duties that we were able to ascertain about what research meteorologists do

14:27

and obviously the point here is when we're doing our analysis for purposes of

14:33

ethics we need to understand whether in to what extent there are there is any nexus between the outside activity

14:40

that's being contemplated and the job that the person is currently doing for

14:45

the United States government so again in order to sort of give you some information to work from we've given you

14:51

this bulleted list and I think you've just a quick look down over that list particular you get to the bottom the

14:58

bottom it's you know published scientific results and peer-reviewed scientific journals and present those

15:04

results at seminars and conferences that immediately jumps out as a place where you're certainly going to have some

15:10

overlap between the work for the society and the work that they're doing for the government yes I think you know that's

15:17

really important that we have some of this additional information and employees aren't always going to bring this to you the first time right this is

15:23

information that you may have to go back and and get from them you may have to ask them a series of questions you may

15:30

have to conduct some independent research looking into what this organization does in order to fully

15:35

advise them and to that end we've provided you some additional information about upcoming meetings of the Society

15:43

so this is information that can help you to get a sense of the flavor of the kinds of activities that our employee

15:49

might be undertaking so that you can do your complete analysis yeah and and you

15:57

are certainly more than welcome obviously to do some of your own independent research here I mean and we would actively encourage you to go on to

16:02

because the American Meteorological Society is an actual organization we didn't give you a fictitious organization to operate with so we would

16:09

encourage you to do the kind of research you would do on your own if this were one of your employees and to take a

16:15

closer look at their website and see what it is that they do and see what information you can find out about the

16:21

types of activities this person might be asked to do as part of their service as a counselor which is the equivalent of a

16:27

board of directors member to to sort of frame you know frame out for yourself

16:34

the kind of questions you would want to ask your employee to the extent that the information they've provided on their request is not ample and the information

16:42

we've given you on that outside activity request is fairly circumscribed there's not a there's not a ton of information

16:48

there so one of the things that we would encourage you to do obviously on your analysis worksheet is to put down some

16:54

questions that you would ask your employee additional information that you might need in order to be able to decide whether or not you thought any

17:00

particular authority was going to be particularly risky or particularly problematic or or a deal-killer yeah and

17:09

I think that's that's a really important point it's good much of what we're doing when we're advising folks about outside activities is sort of predicting the

17:16

future right we're trying to imagine the kinds of work or the kinds of activities

17:22

that they'll be engaged in that might pose a problem so the more information we can have about what they're proposing

17:27

to do and the kinds of of work and activities the outside organization is engaged in the better we can help

17:33

prepare them for those potential difficulties so yeah things we might

17:38

look for is engagement between the outside organization and the government when we see that we know there's a risk

17:44

there and that we're gonna need to advise properly if we see activities where there are the outside organization

17:50

is is seeking anything from our agencies they know there's a potential for difficulty there overlap between the

17:55

responsibilities the employee has in the work in the government workplace and and in the outside activity are also things we want

18:02

to keep an eye out for and in order to figure that out what what we're gonna need to do is learn we're gonna have to

18:08

we're gonna have to find out what you know what what the but the society is involved in what the employee proposes

18:13

to do so we hope these documents help you to do that in a realistic way in a way that's not unlike the way that you

18:19

might have to do that if you're advising someone in your own agency and this Patrick mentioned at the top at the

18:25

front end of this obviously we're asking you to do an outside activities analysis eg meaning that you're going to treat it

18:32

as an activity that your employee would engage in in their personal capacity but

18:39

we also are aware that there are certain circumstances where certain types of activities are things where the

18:44

government if if the agency has the authority can actually allow the employee to undertake certain activities

18:51

in their official capacity as an extension of their official duty capacity and professional Society

18:59

professional Association activities are are one of these activities that you

19:05

know it's a long-standing issue I would say that that that the government has

19:11

had with respect to in what guys in what manner do we allow our employees to

19:17

engage in these professional society professional association activities right and I think particularly though

19:23

they're not uniquely for but I think particularly for folks who are in the scientific research and other

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professional research type of fields professional associations are a way that

19:37

they establish professional stature and so there is not only an interest for the

19:42

individual in their own individual personal professional development that is derived from participation in these

19:48

types of outside boards or just the activities of professional societies but

19:56

that the government derives a benefit from it too in that it enables its

20:01

employee well that enables it enables the government to both recruit and to maintain very high quality level

20:07

personnel in these very critical national positions yes we recognize in

20:13

the ethics rules that the government does have an interest in having certain employees participate with outside organizations and this if you are they

20:19

point out in their in the research community that can be essential to staying current with the state of the

20:24

art in a particular scientific endeavor or other research-based endeavor and it's also very important for people to

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be able to continue to grow in their careers and in their fields so that they

20:36

can continue to perform at a high level for the government so we see that as a real need mm-hmm and so to the extent

20:42

that the government you know is recognized that this level of participation is often very much in the

20:48

government's interest back in 2013 the office of government ethics issued a

20:54

final rule where for purposes of 18 USC Section 208 we codified a new exemption

21:02

from the 208 conflict of interest provisions in part 26 40 of 5 CFR and

21:09

this was for service in an official capacity or not for nonprofit

21:14

organizations we've given you a copy of that Federal Register notice because there's a lot that's discussed in the

21:21

preamble to the final rule that helps to explain both the history of the need for

21:27

a a B 2 exemption from 208 but also

21:33

talks a lot about the way the needs that have been articulated by various

21:38

professional communities and including the Office of Personnel Management with respect to the government's need to be

21:46

able to allow folks to participate and that the government's interest might be

21:51

so much so that where agencies have statutory authority or other authority to assign people that it is in the

21:57

government's interest for people to be assigned in a vena in an official duty capacity now some of the the

22:03

conversation in this preamble I think is very useful and you really should take a look at it because what effectively it

22:11

does is it says yes if an agency has the authority to assign folks that may or

22:16

may not be the end of the conversation in terms of the the things the government needs to consider when it

22:21

just deciding whether or not that's an appropriate thing to do and Patrick if you could pull up the slides for me

22:27

please absolutely and I've just basically put in bulleted form on these slides what the discussion is in the

22:33

preamble so again I would I would I would ask you to look at the preamble for a more copious sort of discussion of

22:39

this but effectively these are the considerations if you're thinking about put it sending someone or assigning

22:45

someone in an official duty capacity a first of all you the agency has to have the authority to assign and the presence

22:54

of a 2640 exemption does not grant agencies authority to sign someone in their official capacity so you have to

23:00

independently have the authority to assign someone right you really want to be make sure that there is mission

23:06

alignment between between they got the government organization and the outside entity because while there may be a

23:13

confluence of interests you know between the society and the United States

23:19

government having someone serve in an official capacity on a board or serve as an officer of that organization does not

23:26

transmogrify that organization into an entity of the United States government so it remains an ounce it remains a

23:33

separate entity and the United States government remains a separate entity and and although there may be again a

23:39

coincidence of interests in some areas that doesn't mean that there's a night that those interests are necessarily

23:45

identical at all time so it's a matter of making sure that there's a mission alignment between what the organization

23:52

does and what the mission of the agency is okay so it that makes sense to me so the first thing is that oh gee II

23:59

doesn't give agencies the authority to appoint people to these things right right we we can fix problems that may

24:05

arise from the ethics rules when that happens but the authority itself is the authorities of agency generally are

24:11

given back to the Congress and the organic legislation so they have to have an authority and there should be mission

24:17

alignment right there should be a reason for the government doing these things but that alignment doesn't suddenly turn

24:22

that organization into a government organization right precisely okay other considerations are funding obviously if

24:30

you if the government is providing a federal employee to serve in an

24:37

important leadership function as in like an officer director or a trustee which is what 2640 provides for that's a

24:45

resource that's a claim of the government's resources so there have to there should be some considerations some

24:51

fiscal considerations as to whether or not in to what extent the government is in a position to basically provide that

24:57

kind of material support to an outside organization you know that would include

25:03

as the bottom bullet indicates competing work priorities so this person if they're going to be engaging in that

25:09

activity on behalf of the of the nonprofit organization that's time that's not being dedicated to other

25:15

mission related functions that might otherwise also be under the the employees responsibilities so those

25:20

again are managerial considerations that that the government would want to take into consideration and then finally we

25:27

just I think there's a question of making sure that there's no preferential treatment and we do state that sort of

25:33

outright and that may seem a little incongruous with the notion of assigning someone to begin with but I think the

25:39

issue here is simply making certain that there doesn't seem to be an appearance of certain a certain group or being

25:47

singled out in some way to the detriment of others similarly situated groups

25:52

again that's not sort of dispositive that's just another consideration when

25:57

you're deciding whether or not it's appropriate for the government to assign someone in those functions in their

26:04

official capacity sounds like sort of been some the presence of this exception

26:10

doesn't relieve an agency of the need to do their general managerial due diligence right right if if they're

26:17

going to make this assignment they have to consider all of the the factors that they would normally make in making the

26:22

work assignment you know including the fiscal ones competing work priorities mission alignment whether we have the authority to do this thing with a

26:29

special emphasis on this idea of preferential treatment yes absolutely and then the next set of considerations

26:36

are and this is also these are also listed in the in the in the preamble

26:42

oftentimes agencies that do undertake to have people serve in an official capacity

26:47

place limitations and conditions on that participation because this is a supervised activity like any other and

26:54

you know any other activity that an employee undertakes and so it's managerial discretion to decide what

27:02

those duties will consist of and whether and to what extent there may be limitations or conditions placed on what the employee can do for the outside

27:08

organization or even continue to do for the government and in light of their

27:14

participation in this outside organization so some of the examples that we give in the preamble to the rule

27:20

are oftentimes employees are not allowed or not permitted to engage in

27:26

fundraising on behalf of the outside organization in part that's because it would be they be engaging in it an

27:31

official Duty capacity so absent and authority for the agency to do official

27:37

fundraising arguably that's an official fundraising activity so and even if an

27:42

agency has official fundraising Authority it may not be that they it may be that they don't would not want their employee to use it on behalf of that

27:49

organization in the context of of that service similarly the next two are

27:55

lobbying and representational activities and this would be not permitting the

28:00

employee to engage in lobbying on behalf of the outside organization there the

28:06

Society or to be engaging in communications back to the government

28:11

generally whether it's like technically lobbying or not but just generally communicating back to the government on

28:17

behalf of the society there might one of the the agency might want to place some

28:23

limitations on the employees ability to be basically effectively representing the society back to the government

28:30

although under under 18 USC section 205 they would be in undertaking that as

28:35

part of their official duties ostensibly and so that wouldn't necessarily be violative of 205 but I

28:43

think it would be something that agencies should strongly consider whether or not that's an appropriate activity for the employee to be engaging

28:49

in I think that that's a really important thing to keep in mind because many of the the ethics rules do not

28:56

prohibit official to the activities the purpose of those the purpose is animating those rules

29:03

maybe things that you want to consider from a management perspective and I think that's especially true with fundraising lobbying and

29:08

representational activities you know the idea of playing both sides are using public office to assist private entities

29:14

those principles remain even in the absence of a specific criminal or

29:20

regulatory prohibition and the three remaining bullets I think are sort of

29:26

reaching - then into maybe limitations you might want to put on what the employee can do for the government that

29:32

might in effect that might have an effect on the outside you know the professional association or society

29:38

which are engaging in certain regulatory matters or investigations or in grants

29:44

and contracts or other things where you know that we be conferring benefits or

29:50

somehow engaging in oversight of the entity that might not be something that

29:56

the government wants this employee to be able to continue to engage in notwithstanding that it wouldn't be

30:01

prohibited under 208 because it's been exempted under the under the 2640 exemption for for this service so again

30:09

it's kind of looking both at limiting what they can do for the outside organization and then also perhaps

30:15

putting limitations on what they can actually do in their official duty capacity for the United States government where the outside entity

30:22

might be involved or affected so you know again it's an understanding here

30:27

that these are two separate organizations where there may not always

30:33

be an agreement you know or or a natural or a conclusive sort of identity of

30:41

interests between the two and that we have to always be mindful that that we're protecting the integrity of

30:47

government programs and operations while still enabling the United States government to to do well by its

30:54

professional develop the professional development of its staff you know that makes a lot of sense that the same

31:00

considerations we have with an outside activity should be considered from a management perspective undue influence

31:06

is still a concern using the the government's resources for the benefit of outside organization

31:11

is a concern and just because the ethics rules don't specifically tell us we have to think about those things that doesn't

31:17

mean we need to think about those things no so I think that's good to keep in mind and it's yeah it's also good for us

31:23

to remember that this is an option that's service in an official capacity with nonprofit organizations it's

31:30

something to consider because sometimes that is the best solution to achieving the goal of a quote/unquote outside

31:37

activity request yes and I think all of the things that we just spoke about all of the limitations and considerations

31:44

are things that you're going to encounter when you're trying to do that your analysis with respect to any

31:50

service that they do in a personal capacity that similar this this these issues are going to have to be analyzed

31:56

from the standpoint of how do the ethics rules limit their ability to do a whole

32:03

host of things including those things that are on that bulleted list if they're serving in a personal capacity

32:09

so you can you you it gives you a four tastes of the complexity of the analysis you're about ready to undertake no

32:14

absolutely and maybe just just before we go reminder about what we're trying to

32:19

accomplish between now and and and Thursday what we're asking you to do so

32:25

what we're asking you to look at this outside activity request as an outside activity aggress some things someone is

32:32

going this I this employee is proposing to do in her personal capacity so we're

32:37

not going to be looking at the considerations under the exception to 208 that we just talked about we're gonna be imagining this as if she is

32:43

serving in her personal capacity outside of work and we're going to use to conduct that exercise first to the table

32:50

of applicable authorities which is going to give us a sense of each of the authorities and provided some questions

32:56

to make sure they're to help us determine whether or not this is likely to be an issue and we're gonna remember

33:02

always that if this is likely to be an issue we want to go to the statutory language and any interpretive guidance

33:07

necessary to to make it complete a complete piece of advice but we're gonna

33:12

start here because this is sort of our roadmap to the process and we're going to use that document to help show our

33:20

work on the analysis sheets so this is analysis sheet is really your work this is what

33:25

we'd like you to fill out between now and Thursday to determine for each of the authorities whether they're not gonna be a problem they're gonna be a

33:32

risk we need to take steps to manage or that . there's no way this this is a showstopper she's not going to be able

33:39

to do this activity because of the authority and we want to do that for each of these authorities and also we

33:45

wants you to we suggest that you do that methodically by going through one at a time and indeed that's how we're going

33:51

to do the the debrief on Thursday so we'll be going through these in the

33:56

order they appear on the form and in order to complete that work we've given you the request form that are

34:02

theoretical our imaginary employee is completed we've given some information

34:07

about her responsibilities for the government and also we've provided some information about the society that she

34:13

proposes to serve in so we hope that these this information in total will

34:19

allow you to complete the exercise or at least find out what you need to find out and we hope you have time to do that

34:25

between now and Thursday because we are looking forward to joining you on Thursday to go through the the total

34:30

exercise mm-hmm so for anyone who's on the phone who has any questions you

34:37

would like to call him with any questions about the exercise or anything that we've said here today please feel

34:43

free to do so and for those of you on line if you want to send any questions

34:49

you have or if you have any questions about the exercise you can either contact your desk officer with the

34:54

questions or you may contact either me or Patrick as well with any questions that you have if you're unclear about

35:00

any of the instructions that you receive today yep and you know I think the important thing is to give it a try yeah

35:06

so you know give it a try see how you do we're gonna go through it in great

35:11

detail on Thursday so you'll be able to find out you know I saw those issues or maybe I didn't think about that and

35:17

that's what we're all trying to do is these get a little better predicting the future do we have any questions on the

35:24

phone

35:29

a session to ask a question please press star 1 on your phone and record your name clearly when prompted to withdraw

35:35

your question please press star 2 one moment for our first question

35:47

and for those of us who are joining us not on the phone who are on the on the broadcast I understand we we lost audio

35:53

for just a minute hopefully you didn't miss anything important and that you have a clear picture off of the exercise and and I

36:01

think we figured out the solution so we shouldn't have a problem on Thursday

36:13

hopefully that's a good sign that they're reasonably clear in our instructions okay thanks very much

36:25

excellent well I you know if you do think of questions I'll you know if you please feel free to reach out to someone

36:30

at OGE and if not we hope that you find some time to try the exercise out and we

36:36

look forward to joining you on Thursday for the debrief

[Music] my husband thank you for standing by at

0:11

this time all participants are in a listen-only mode until the question and answer session of the call feel like

0:17

that's a question during that time please press star followed by number one now like to turn over to meeting -

0:22

Patrick Sheppard you may begin Thank You Angela good afternoon and welcome to part two of our outside

0:29

activities analysis massive open online course Patrick shepherding I'm joined

0:34

again today by Cheryl cam piasecki hi so we hope you had an opportunity to take a

0:40

look at the exercise and give it a try I sort of a complex fact pattern we don't expect with the information that

0:46

we've provided you that you'll have been able to solve the the situation but that

0:52

you'll have had an opportunity to think about some of the issues that you're gonna need to think through and advise

0:57

the employee about so what we'd like to do today is take a little bit of time to

1:04

walk through each of the statutes each of the regulations and show you some of

1:11

the areas that we think it should be important mm-hmm one reminder today too

1:17

is that we're going to be we've we've asked you to do the analysis on the basis of the employee participating in

1:22

this activity in their personal capacity as a reminder last week we did we did

1:29

cover a little bit what you should consider in the event that you would

1:34

rather have the individual perform this function as an official duty activity and we talked about it specifically with

1:39

respect to the exemption in 26:44 service and official capacity or

1:46

nonprofit organizations in addition to the Federal Register notice that we gave

1:51

you last week about that I also wanted to alert you to there is a legal

1:56

advisory that OGE issued in 2014 back in 2014 or 2013 I'm sorry I'm sorry

2:03

it's LA 1305 so again that's just some additional guidance if you if you do

2:10

believe that you would like to have your employees or would to seek to have your ploys appointed to these kinds of positions in the official

2:17

duty capacity that's just an additional bit of advice advisories from from the

2:22

office of government ethics that can it can assist you with that with that appointment so we'd like to

2:27

start by going through just a quick refresher of the fact that we're we're detailing today so we want to make sure

2:34

that everyone's on the same page about who our employee is and what they're proposing to do and as Cheryl just

2:39

mentioned one of our threshold determinations is going to be whether we want to pursue this under the idea that

2:45

this will be conducted as an official Duty activity as part of the government responsibilities or whether we would

2:51

like to pursue this as something that's being proposed as indeed an outside activity that our employee will be

2:56

engaging in her personal capacity and as we said on Tuesday we've already made that decision we've determined that

3:02

we're going to look at this as a possibility for her to pursue in her personal capacity this being an outside

3:09

activities class we're going to analyze it as indeed an outside activity and so we have our our employee we've detailed

3:16

you for you in the request sheet some of some information about the employee so

3:21

our she is a research meteorologist she's proposing to serve as a counselor

3:27

for the American Meteorological Society

3:39

she's a research meteorologist he's a gs-15 so we know that she is a she's a

3:47

career official she tells us that this is going to involve both teaching

3:52

speaking and writing as well as board service and she describes in some detail the services that she's gonna perform so

3:59

she's been invited to serve as as a counselor for the American Meteorological Meteorological Society

4:05

it's equivalent to service on the board of directors she'll attend all the meetings as well as other meetings and

4:11

Association events throughout her term and as a research scientist she will participate in a symposia and peer

4:18

review of articles dealing with meteorological science so we get a little bit of sense about what it is

4:23

she's proposing to do she then provides us some other information we get some general

4:28

information about the Association she indicates that this won't be compensated I caution you against taking that too

4:35

literally this probably means that what she intends that she's not gonna receive a salary or a fee or cash payments for

4:42

her services because just a little bit later she indicates that she will be

4:48

receiving something of value she'll be receiving some in kind travel reimbursements the society generally

4:54

will pay for travel and lodging associated with attending the meetings and related events she gives us some

5:02

idea about how how much time this is gonna take her she's about 30 business days a year attending meetings and the

5:07

like and this is a little troubling she indicates that maybe she's not intending

5:14

to do all this work outside of her her official responsibilities which may be a place that we're gonna need to dig in a

5:20

little bit and clarify what the what the rules saw do and do not allow so that's

5:26

our general fact pattern we've also provided you some information about her responsibilities with the society as

5:32

well as a schedule of meetings so that you kind of have a sense of what what it is the society is involved with which

5:37

will help us with our analysis so what we're going to use to go through today's

5:43

exercise is the table of out applicable authorities that

5:48

we shared with you last time we got together it has some key questions and some summaries of the authorities in a

5:54

few cases we're actually gonna go to the text of the rule to look carefully at some issue areas as always we would

6:02

encourage you very strongly in the strongest possible terms that this table

6:07

of applicable authorities is an aid to issue spotting it is not the text of the

6:12

rule it's not the interpretive guidance that OGE is issued so if you find that there is potentially an issue in one of

6:18

these areas please consult the full text of the laws and regulations police can consult the relevant advisory opinions

6:25

to make sure that you're providing complete and accurate advice but you can use this tool to help you with that

6:30

issue spotting and that's exactly what it's designed for and that's how we're gonna use it today and even though we don't go through the specific text of

6:37

each of the laws it's not because you shouldn't it's because it would take us about five hours to get through this class if we did right and similarly and

6:43

I don't want to believe you're the point but similarly the questions that reside alongside the summary of each of the

6:50

authorities are simply for purposes of helping you to in a very broad way be

6:55

able to flag key pieces of information or to hone in on where you're lacking

7:00

information where you may need to ask your employee or son or get from some other source information that can help

7:06

you answer a particular question to establish whether or not that particular element of the statute is is is met so

7:13

again this is a job aid this is a shorthand way of helping you get your hands around what you think the issues

7:20

might be and which of the authorities may very well be implicated or where you may be needing to provide advice but they are certainly not exhaustive yes

7:28

and we've also provided in the course page a document that the learning points

7:34

for today's presentation and this again isn't the opinion it's not the advice that you would provide to an employee

7:40

but it is a brief summary of some of the issues we're gonna discuss today and it's intended as exactly that a brief

7:47

summary to help you recall and then sort of follow along if you find that to be helpful as some place to take notes as

7:53

we go through today's presentation that would be a good use of that document but again that's not provided as legal

7:59

guidance it's not intended to assist you in writing up but to help you in navigating our discussion today do we have a copy of

8:05

that that we could pull up yeah okay I just I want to quickly just a few caution Ares here with respect to this

8:13

this document we gave it to you as sort of a takeaway from the exercise today because we know we're going to be

8:18

talking a lot and you're going to be taking a lot of notes on your own but we thought to give you something that's a

8:24

takeaway that has the high level learning points would be useful for you to even try to remember like what the conversation was that we had today

8:32

several things one that it is for instructional purposes only it's only meant for training purposes it's not

8:37

meant to be a legal interpretive guidance document but secondarily I want

8:43

you all to understand that our use of the stop caution and go signals will try

8:50

to sort of explain that a little bit as we're going through our analysis because there's not one right way to use the

8:56

stop you know risk you know go function here that's mostly for you to have a

9:03

quick way of knowing whether or not it's something you really need to immediately take care of or if it's something that

9:09

you're likely not going to have to worry about so I don't want you getting caught up you know really caught up in whether

9:15

there's a specific and and and correct way to use those those signs the answer

9:21

is not necessarily it's really as you find them convenient right and the way we're gonna use them today is we're

9:27

gonna use the stop sign to indicate a place when we need to advise the employee not to do something so when do

9:33

we have an affirmative obligation here to say you have to avoid doing this otherwise you will be in violation of the rule right so basically it's a

9:40

determination that the rule applies and reasonably will apply to the facts that are available to us right we're gonna

9:47

use the go to say that yeah this is a rule that will not apply it that we don't think is likely to apply given the

9:54

that the facts here and risk is one where we might need some more information we would want to explore it

9:59

find out if there are facts that we don't have that would require us to either advise someone not to do things

10:06

or to make a determination that's you know it's not going to be an issue but again that's the process here is we want

10:12

you to do that for each of these time to determine conclusively that this

10:21

may apply and we've advised an employee to take actions to avoid a violation or to determine conclusively that there's

10:27

no risk here and until you get there you need to keep working right exactly right also in the interest of time what we're

10:35

going to do is work through the various authorities and talk about how they might apply to our fact pattern and

10:43

we're going to do that one Authority at a time mostly we're mostly gonna go in

10:52

sequence and the reason for that is we encourage you to do that because the hardest part about advising on outside activities is making sure the advice is

10:59

complete the easiest way to make sure that your advice is complete is to use this guide as almost like a checklist to

11:06

ensure that you've considered each of the authorities and so I think we're gonna start by breaking our first rule

11:12

and and looking at the first two authorities in concert 18 USC Section

11:17

203 and 18 USC Section 205 and together

11:22

we think of these as the statutory representational bars and the reason we

11:28

look at them together is because they prohibit similar kinds of activities and namely they deal with representations by

11:36

federal employees before the government so this is when an employee of the

11:41

government is making a representation on behalf of another person back before the government and into any government

11:47

agency it's not just the agency that employs them and 2 or 3 deals with compensation for that same activity

11:54

either either representations provided by the employee or compensation received

12:01

in exchange for representational services before the government provided by another so in through a three land

12:06

it's not necessary for the employee personally to provide the representational services they are also

12:11

forbidden from having a share and income derived from representational services before the government and in Patrick I

12:18

mean I think it might be helpful to give people with respect to two or three Sensibility about the kinds of outside

12:25

activities that would give rise to a potential 2:03 problem before we apply

12:31

it nibs necessarily to our specific case I think that some of the big red flag kinds of activities are those activities

12:38

that involve the provision of representational services for money in exchange for money so the most obvious

12:44

example is is law firms that practice before the federal government if you have an employee who's proposing to

12:50

serve in a law firm as an outside activity you want to be very very careful about two or three because they

12:55

may be providing those services themselves which would be prohibited by both 205 and 203 or they may be taking

13:02

part in in monies received in exchange for those representational services provided by another for example a

13:07

partner at the firm so in those cases you want to be really careful also organizations that provide

13:13

representational services in other kinds of government matters for example government affairs or lobbying

13:20

organizations where they have clients that they're representing before the government those are times when you want to be really really careful about both

13:26

203 and 205 but maybe surprisingly to some people we want to be concerned

13:33

about 205 in almost every case right because 205 is surprisingly broad in

13:40

what it prohibits and surprisingly easy to violate in the kinds of everyday activities that could come up that would

13:47

be violative 205 so maybe you'll be good to think of through whether your this is going to apply to our employee that the

13:54

the atmospherics organization yeah I think that and I would argue that I think it's almost better to start with

14:00

205 because at the end of the day if the employee is not likely to be engaging in

14:05

any kind of representational activities on behalf of the organization then we're not going to have to worry about them

14:11

receiving compensation for sex or engaging in those activities so I think what we need to do then in the context

14:18

of our employee is to say what sorts of act services are they going to be providing to the outside organization

14:24

and are there going to be any opportunities for that for them to be providing any kind of a representation

14:31

back to the United States government on behalf of that organization

14:36

so Patrick we've looked at we look at the fact that she's going to be serving as a counselor she's going to

14:42

serving on the board of directors you know what is the likelihood do we think

14:47

that you know or what would we need to ask or what would we need to sort of think about to determine whether or not

14:52

we think there'd be any representational activities sure well you know I think this is an area where you almost always

14:59

want to have some advice because it's relatively easy to create situations that are potentially violative of 205

15:06

and that we conducted some research and looked into what the society does and one of the things I have were some

15:11

public-private partnerships with various government agencies that's a big waving

15:16

yellow to red flag for us because it means that as a matter of practice this society has contact and

15:24

matters with the government and if our employee were to be the face of the

15:29

organization in connection with those matters asking for action by the government that could potentially violate 205 so it's something we're

15:35

gonna need to remind her to be very very careful about mm-hmm even absent that fact I think we still

15:42

want to be careful about 2a5 because things in the course of regular work and

15:49

activities sometimes invent themselves to cause us 205 problems for example we

15:55

can imagine this situation the society is having a meeting or event or a conference and our employee says you

16:02

know what one of my colleagues in the next division at NOAA would be a really good speaker for that event so she sits

16:09

down at her computer at the society and shoots off an email to her colleague back in the government and says you know

16:14

could you join us to talk about that really interesting thing you're working on well she's just created a matter

16:19

where the government has to direct a substantial interest as an interest because the government always cares about how its employees spend their time

16:25

and energy yes and she has made a representation and that representation appears to be on behalf of the society

16:32

which according to the text of section 205 is is likely a violation so even if

16:39

we don't see that fact in evidence immediately we want to make sure that our employee is cautioned against

16:45

creating that situation and that's that that's something that doesn't feel

16:50

terrible right it doesn't it doesn't stand out in your mind as an obvious leak activity maybe to the employee so it's

16:57

an area where you want to be very careful in the counseling to make sure they understand that that if someone in

17:02

that society is going to be talking to the government it can't be you and I think that this is one of the problem

17:09

the the the complex the problem with uo5 i mean problem it's that it's a very

17:14

broad statute and so there are and and the relationship between professional

17:20

societies and professional associations and you know the federal entities where who have professionals who are likely to

17:27

be engaged in those society activities is precisely this it's very fluid the

17:32

communication back and forth between the employees of the agency and and the and

17:37

the associations themselves are very fluid and there's just a lot of caution

17:44

has to be exercised when particularly in this case where your employee is going to be serving in a fiduciary capacity

17:51

with that outside organization such that when she is wearing that hat it's

17:57

undeniable that she's acting as an agent for that organization so so the agency

18:03

with which she would be having those communications when she's doing it as a member of the as a counselor for the

18:09

organization is is is I think gonna be much more of a concern and a risk under

18:16

205 than let's say just if she were an active participant in the organization and be having those kind of

18:21

conversations absolutely and that's it's important to remember that as someone who's sitting on basically the board the

18:27

the relationship and the control is sort of obvious in that case so that elements easy to satisfy so 205 is definitely

18:36

gonna be a risk here we're gonna need to take some affirmative steps to counsel our employee so that she doesn't

18:42

inadvertently violate 205 203 is a little less clear if she avoids

18:49

personally making those representations she takes care of half of 203 which prohibits receiving compensation for

18:55

those same representations so that's gonna be satisfied as long as we're

19:00

thorough in our 205 counseling because there shouldn't be any cases where she's providing representations before the

19:07

government on behalf of this the risk of her partaking an income from someone else engaging in

19:13

representational services seems to be less in here because the society isn't an organization that provides

19:18

representational services they're not a law firm they're not a lobbying shop and also she's not receiving us a salary or

19:26

partnership share like you might in the case of a firm yeah to the extent that she's receiving anything that could be

19:31

construed in some manner as compensation it's it's travel and related expenses now we might want to pursue with her

19:37

further and clarify that that is indeed the only type of remuneration that she's getting from the organization but that

19:45

type of compensation is I mean I'm not saying that there's no incidents where

19:50

it could ever be in exchange for representational services but in this case it appears that that compensation

19:56

is a benefit that's accrue that accrues to anyone who's serving as a counselor and it's for it's with respect to

20:02

providing those services as effectively a member of the board of directors yeah so in effect our 205 advice if it's

20:10

sufficiently thorough is it's going to be prophylaxis against it advertent two

20:15

or three problems given the fact we have here again if we're talking about an

20:21

organization that provides representational service this is a line of business like a law firm or a government affairs firm then we need to

20:27

look at two or three separately because there there is a possibility even a strong possibility of partaking in

20:34

compensation that's derived from representational services provided by another right and just sort of I did a

20:41

little spelunking on the societies in the association's website the American Meteorological Society website and the

20:50

they do do some lobbying I mean or some some definitely some representing before

20:55

the government they have a framework for government interactions so clearly some of the folks at the society are engaging

21:01

and in do they have meetings with the heads of executive branch agencies with respect to policy discussions and

21:08

whatever so the society itself does engage or at least parts of it do engage in those types of communications direct

21:15

communications meetings with federal authorities so I think that with that kind of knowledge I think it whether

21:22

not she will actually be or would be expected to be engaging in that as a member of the board of directors is something that you would want to get to

21:28

the bottom of because that would be an activity that she that 205 would prohibit her from participating in a

21:36

another aspect of the work that she's going to be doing or could be doing she

21:41

discusses that she would be doing some peer review of scientific articles we

21:48

looked online and the Society actually has some of its own publications that it engages in where it solicits articles or

21:54

it has people send in articles they do scientific peer review and make

21:59

decisions about who gets published and who doesn't in the context of that peer review process to the extent that

22:05

federal employees might be submitting articles that would for publication in

22:11

the Society's journals and she would be asked to be part of that peer review

22:17

process again you're gonna have to do a little spelunking or she's gonna have to do some investigating into whether and

22:24

to what extent there might be some communications on behalf of the journal on the behalf of the society back to any

22:32

federal employee in the context of a research that clearly was conducted by

22:37

federal employees you know and it's you know federal work product yes so this has the potential to be fairly

22:42

restrictive about the activity she can undertake on behalf of the board and I think that's really important as we do

22:48

these outside activities analyses to remember whether these restrictions restrict activities on the outside on

22:55

behalf of the outside organization or in the government workplace and in the case of 203 and 205 we're talking about

23:01

restrictions on the activities she can undertake as part of her outside activity so on behalf of the society so

23:08

here our advice is going to be that you cannot represent the society back before the government so this is again this is

23:13

a really important point to keep keep in mind because there are going to be considerations that go into this

23:19

analysis that from the government standpoint it would so preclude her

23:24

ability to do her government job that it might be ill-advised for her to do it but there might be restrictions that she

23:30

faces in actually performing the functions for the outside organization that would make it unlikely that the

23:37

outside organization is willing to accept those very limited services so that's the that's the reason to sort of

23:43

like keep these things straight because some of the things are things that then she would have an obligation to discuss

23:48

with the outside organization to make sure that it wasn't those weren't deal killers for them with respect to her

23:54

being able to fulfill our obligations to the obligations of the position that she would be seeking yep okay so so 205

24:00

definitely an area where we're going to need affirmative counselling we're gonna have to be really clear about what the

24:07

restriction entails and make sure that our employee understands those and understands that those will will affect

24:14

your service on the board and we probably want her to make sure that the board is okay with accepting those restrictions exactly okay so moving on

24:22

to our next criminal statute our next one is probably one that everybody was a

24:28

little bit more familiar with has a little bit more experience with dealing with and that's our what I call the

24:34

mother of all conflict of interest laws 18 USC Section 208 and as Patrick as

24:42

anyone who's dealt with 208 understands there it is fundamentally when it comes down to brass tacks it is basically a

24:48

nexus test what 208 says is that an employee may not participate in their

24:54

official capacity personally substantially in a particular matter for the government if the outcome of that

25:01

matter could have a direct and predictable effect on a financial interest that they themselves have a personal financial interest or the

25:07

financial interest of others whose interests are attributed to the employee under the statute so we our Nexus test

25:15

is Dukan it's two pieces of information that we have to have to do a conflict of interest analysis Patrick what are those

25:20

two pieces of information that we have to be in possession house so we have to understand the scope of the person's

25:26

responsibilities for the government because this is a bar on participating in certain government matters we need to

25:32

know the scope of their responsibilities for the government we're also going to need to know what are those financial

25:38

interests that are imputed to the employee what are their personal financial interests one of the financial

25:45

interests of their spouse what are the financial interests in this case the organization that they serve as on

25:52

the board because they the interests of someone of the person whose board you sit upon are imputed to you as a federal

25:58

employee so basically she stands in the shoes of the Society for purposes of 18

26:04

USC Section 208 exactly so so when we're looking down over these questions one of

26:09

the first questions that we ask with respect to 208 sort of reaches to this financial interest piece which is you

26:15

know with a federal employee be serving the outside entity in one of these articulated capacities because the

26:22

minute someone is engaging in an outside activity where they're going to be serving in one of these positions which

26:27

is officer director trustee general partner or employee we know immediately that the the interests of that

26:34

organization the all of the financial interests of that organization are now attributable to the employee so it

26:42

becomes really imperative for us to immediately identify whether or not there's any matter that the employee

26:49

might touch I might be engaged in on behalf of the government so now we're reaching into what she can do or not be

26:55

able to do for the government on the clock or the government at 4:00 at the other official duty activities and so we

27:01

want to flag anything that we think could potentially the outcome of the matter which could potentially affect

27:07

any aspect of the financial interest of in this case the Meteorological Society

27:13

so I think we want to first sort of take a look at like what are her duties and looking at her duties we can then maybe

27:20

get a sensibility about whether and to what extent those could affect the the

27:26

the society where there could be some sort of a coincidence of interest

27:31

between the Society and and and and her that the government among the things

27:38

that she does is that she provides technical and research leadership and

27:43

mentorship to junior colleagues so when we think about some of the activities

27:49

that the the Association engages in they obviously do symposia they obviously

27:54

have conferences they obviously offer short courses and these are obviously for people who are engaged in

28:01

meteorological science well clearly Amanda's not the only person who is engaging meteorological

28:07

science there are a lot of people who are so I think it's a fairly safe assumption to say that other members of

28:12

her organization participate in these societies or would be encouraged even to

28:18

participate in these societies so Patrick how would how would that how

28:23

could we would see to await being a concern here in the case of a mentorship with junior with junior members of the

28:30

organization or even just other meteorologists in the organization no absolutely you know you can see a number

28:36

of vectors by which this could be become a problem right we see that there's definitely a nexus between the society

28:42

and the work of her office right we see that there's an overlap between those two things and there's always when you

28:49

have these things a potential for the creation of matters so things that I'd be concerned about would be for example

28:55

she sees an opportunity at the society that would be good for one of her subordinates to attend and recommends to

29:01

that subordinate that they put together a training request form for her signature to attend the society learning

29:07

event right and in so doing she has created a contract yeah and the contract has two parties it's the government and

29:14

the society and she has participated personally and substantially in that and if they said arguably are now violated

29:20

18 USC Section 208 for some reason we tend to have a blind spot about the

29:25

provision of training like somehow that's not a kind of contracting we would understand this to be a problem if

29:31

she was say for example working for a government contractor that made trucks and she said to a subordinate we should

29:39

buy trucks from my outside truck employer we'd say you can't do that it's clearly unlawful right but somehow when

29:45

it comes to buying a different kind of product or service like in the case of the society the the product or service

29:51

is is a training symposium we don't see that maybe because it's not tangible as

29:56

as what it is which is the purchase of services yes exactly and I think that this is an area that that is kind of an

30:03

unexpected area for a lot of folks so you don't think about it necessarily immediately as signing off line or

30:10

recommending to an employee or even to your organization that even that people should be members of this society

30:16

because I don't know the weather in to what extent agencies you know pay for membership or and I think there are some

30:23

times when they're able to do that or suggesting that the agency itself have membership purchased membership in this

30:28

society so any participation in any of those types of things right which seem innocuous on some level still might very

30:37

well be you know prohibited by 18 USC Section 208 purchasing a subscription to

30:44

the journal yes I think it's a contract there to parties it's the society it's the government she's sitting on both

30:49

sides of that it's a conflict of interest uh-huh so yeah we want to keep that in mind and also some of the research we

30:54

did when we were looking at 2 or 3 and 205 is equally troubling yes we learned there's active public-private

31:01

partnerships between government agencies in this organization which means there may be matters going on in our

31:07

organization right now that affect the financial interest of the society and we

31:12

need to find out if she's currently assigned to those because if she is absolutely absolutely so I mean it's not

31:19

it's not entirely clear that as a as a research meteorologist she would necessarily be the person who would be

31:25

engaging in getting those collaborative or cooperative arrangements you know set

31:30

up right but to the extent that she she might be participating on some in some aspect of that and whether it's a

31:37

private private public sort of like co-sponsorship whether it's something

31:43

that's more formal like a cooperative research agreement right any of those things where even just as an as a

31:49

subject matter expert she might be being brought in to provide some sort of assistance or recommendations those are

31:55

things that we've got to hop on and because they're to the extent that they involved and and thereby affect the

32:01

financial interests of the a of the society she's gonna have to be disqualified from this I have to worry

32:06

or issued a waiver to participate in them right and it's important to remember she doesn't needn't be the the

32:12

official signing off on this thing it doesn't have to be the final decision-maker merely a participant if

32:17

she's participating in the substance of this matter in any way that's prohibited by 208 so we

32:22

we're gonna need to do some some some digging to find out what she's currently assigned to in for her government

32:29

responsibilities and use that information to provide full and complete guidance on 208 and especially with the

32:36

caution not to create new matters right and and one final area that I do want to highlight again because I don't know

32:42

that it's something that would necessarily jump out at us because I think we have a way that we frame our

32:47

understanding of what we think constitutes a conflict or could constitute a conflict the the Society

32:54

also is the sponsor of several very highly qualified scientific

33:01

peer-reviewed journals our research scientist says that one of the things

33:06

that she would be is engaged in currently for for the government right is to obviously publish her scientific

33:13

research in peer-reviewed scientific journals so if she's serving as a

33:18

councilor tantamount to board of directors for the Society there could be

33:24

some 208 implications for her submitting you know potentially situate

33:30

implications for her submitting things to to them Society sponsored journals

33:38

right for peer review and publication yep so that's something that we're gonna

33:44

have to be careful about because she was creating research he's creating scholarship and she is submitting that

33:52

to the society again we have a matter and there are two parties to the matter it's the Society in the government and

33:58

the society has a financial interest in how it spends its resources in time so

34:03

there is that potential for a to a problem there so we want to make sure she's properly counseled yeah so so we

34:09

just there there's a whole waterfront of things here which may again may not be deal killers it may not mean that she

34:15

can't do it because certainly there are other peer-reviewed high-quality peer-reviewed scientific journals out

34:20

there I don't think that that means that she's never going to be able to publish her publisher research but it's just to

34:25

the extent that that we know that that is the societies journals for example

34:31

are typically ones where where where research is submitted we're gonna have to be extra careful

34:36

here with respect to anything that she might submit if she if she serves on there on the council great our next

34:46

authority brings us to 18 USC section

34:53

209 we can tell that because it comes after 208 and 290s with a

34:59

supplementation of salaries so basically being paid by someone other than the government for conducting your

35:05

government work we have some facts here that maybe make this less of a concern

35:11

she indicates she's not receiving a fee other the only thing of value she's receiving are those those travel

35:17

expenses that are in connection with attendance at Society events something

35:23

we want to think about here is just making sure that whatever she's receiving from the society isn't being

35:29

increased or enhanced because of her official position so we could be reassured in the case of section 209

35:36

that these are bona fide payments in connection with the outside activity and

35:42

are not being given because of her official position if say all of the board members received the same benefit

35:48

regardless of whether they're federal employees or not that would be a strong in dish' that this is a customary

35:54

benefit provided because of the service on the board and it's not somehow a supplementation of the the employee's

36:00

salary you could see where you might have a problem here under 2 & 9 for example if the board wanted to provide

36:07

her or the Society wanted to provide her an honor area for a paper she wrote as

36:12

part of her government duties the work we do for the government is federal officials I used to be compensated by

36:19

the government and only the government so accepting an honor area for work that you did on behalf of the government

36:24

would be prohibited under section 209 so if we had facts and evidence to suggest some sort of arrangement like that we

36:29

would have a concern if we think it's possible something like that would arise that's you know that you might be

36:37

invited to provide a speech in an honor area or a payment might be provided in that speech would be interfacial capacity you know if we had those kinds

36:43

of facts and evidence we'd want to make sure that that the employees counseled yeah and I think that there is some some

36:49

again some room for confusion on the part of the employee and I think this is

36:54

where it's really incumbent upon us in these kinds of situations to provide some really really robust as sort of as

37:01

specific as you can be for instance you know example Laden kind of advice and counsel to folks because I think one of

37:09

the areas that's really difficult and it's even difficult for us to sort of differentiate is the reason we're

37:17

concerned about these things is because we there are these two capacities that we always have to keep straight as

37:22

federal employees one is the notion of acting in your official capacity and the

37:27

reason we care about that is because you are acting with the authority consent etc of the United States government when

37:34

you are acting in your official capacity you have been authorized to be a spokesperson on behalf of the United

37:40

States government and we distinguish that from things that you do in your personal capacity where where while

37:46

subject matter wise particularly for folks who do research and do science subject matter wise there may be overlap

37:54

in things that you are doing personally personal research that you conduct and then obviously what you're doing on behalf of the federal government right

38:00

but but we insist that you have to be clear under what guys you are presenting

38:07

information to other outside sources or to the public so we say it has to be

38:13

abundantly clear that if you're there in your official capacity you're there in your official capacity and then you have

38:18

the ability to identify yourself as such who pays you for that is is is is

38:24

important who gives you you know any kind of a benefit in connection with

38:29

that traveling related benefits because we have appropriations law so it matters but I think when for your average

38:37

employee they're just saying professionally speaking I'm a scientist as a profession I do research as a

38:43

profession I do these things and I don't see myself as having two separate personalities you know literally two

38:50

separate person hoods that I have to be negotiating back and forth between I am a singular person and this is what I do

38:56

so I think we have a special need to help clarify for folks why it is that

39:04

we must insist that they treat themselves as literally having two hats

39:10

and that they do their level best to make sure that they build like a china

39:16

wall between them so you they are it is clear to themselves into everyone I am

39:21

here acting in this capacity I am speaking in this capacity so that there

39:26

is no confusion and so you know there the violations can be avoided you know

39:32

that would otherwise be just basically inadvertent email and I think it's important here but we do have some

39:38

evidence that she doesn't draw this distinction she tells us in the request that some of this work is going to be

39:44

done in the government workplace we need to make sure that this line is clarified

39:50

and I have sympathy with employees especially in agencies that have prior approval requirements so I'm an employee

39:56

I fill out an official form I give it to a government ethics attorney they provide me an opinion and that's all for

40:03

something I do outside of work that has nothing to do with work yeah it's this structurally it's a little bit confusing

40:09

so I think it's a point that we understand very well as ethics officials but is not intuitive to our employees

40:14

and we need to make sure that it becomes intuitive because negotiating between in our case the the agency and the society

40:21

it's going to be difficult yeah and it's going to require very very careful

40:26

distinctions between those two roles and here under Section 2 and I'm we see one of the important ways that this

40:33

distinction is important same with 208 you know some of the same activity is going to be precluded by

40:38

both and that's all the more reason to go through these one at a time yes absolutely okay well I think that that's

40:45

what it does it for the the statutes we do want to give you an opportunity to ask questions us so we're gonna take a

40:52

break here and in just a second and open the phones up to a few questions or just five or so minutes because we do have a

40:59

lot to get through but if there are things you say you know I'm not sure I heard that correctly we do want to give

41:04

you that opportunity so so operator if we could if we could open it up briefly for questions

41:10

thank you we will now begin the question and answer session she'd like to ask a question please

41:16

press star 1 and record your name clearly one moment could use why we'll wait for the first question

41:38

I think it's interesting as Reese's we go through this process you see just how much analysis is involved in negotiating

41:45

these kinds of situations and making sure that we we remain in compliance and it's complicated and you know frankly

41:52

it's a big risk area because ask an employee to manage all of this it's a lot and I think it's also this is

42:07

a good illustration of why many agencies who have the authority to do it actually

42:13

assign employees to do these types of activities in their official duty capacities because I think one of the

42:19

frustrations with this Patrick and I'm completely sympathetic with that is that as as the eve as the Federal Register

42:24

notice that we went over last week discussed and as the advisory that I referenced earlier will talks about at

42:31

length as well is that there is a consonance of interest very often between professional societies and the

42:37

government that it's very much in the interest of both parties to have exchanges to engage in in shared

42:45

research to to to collaborate in in a variety of ways and certainly for the

42:51

individual professional development of scientists it's it's vitally important that they be allowed to have the ability

42:57

to participate in in professional societies it's like a professional qualification right so so I can

43:04

certainly appreciate the frustration of individual employees in particular as to why it seems that the conflict of

43:11

interest laws and the krita and that the the statutes and the standards seem to

43:17

seem to create impediments to that having said that we all have to

43:22

understand the law the law is what it is I mean we can't make it say something that it doesn't say and we can't create

43:29

exceptions where there aren't any so we have to do our best to do diligence to make sure we're keeping both the

43:36

employee protected if we're going to permit them to engage in these activities to the greatest extent possible but that we're also protecting

43:42

the government's interest as well because while there are continents of interests between between the outside

43:49

entities and the in many cases with these professional societies they are not one in the same

43:54

they aren't they are not the United States government and the United States government does not become the society the society so I think we do have to be

44:01

careful about thinking that that we need to allow everything or nothing right you

44:08

know yeah and I think this is especially complicated because there there are three players involved you know usually

44:14

when we're advising employees there's there's two you know there's the there's the government and the contractor

44:21

there's the petitioner and the government agency there's sort of two

44:26

sets of interests and here we have three sets of interests we have the society we have the government qua the government

44:32

and the employee as an individual and all of those all three of those have

44:37

rights in some cases responsibilities in some cases interests in all cases and

44:43

managing the the confluence of all three is a challenge we don't suggest that this is an easy area to advise that's

44:50

why we do these these long MOOCs for the for the outside activities because it's hard so if you find that when you're

44:57

advising employees your desk looks a mess you have ten pieces of paper you have three websites open a bunch of tabs

45:02

open and you're writing long opinions that's cuz it's hard let's guess we're looking at you know 17 18 provisions of

45:09

law and regulation if every single time so you know we've we've now at least

45:15

worked through the the statutory portion of the the analysis and we we merely

45:21

have the rest of the standards of conduct so should we do that I think all

45:28

right so it's next on our list of of authorities to consider are the gift

45:34

rules so the gifts from outside act outside sources and there's a threshold question here which is is there

45:41

something being offered and here we have the fact yes yes she's going to be receiving kind travel benefits in kind

45:49

travel benefits or a thing of value they are not not gifts so we have to consider

45:54

them right it's something we have to look at the next thing we have to ask is who is offering these things you know

46:01

how are they being provided and in this case you know that the two prohibitions we have another gifts rule

46:06

so you cannot accept gifts given because of your official position nor given by prohibited sources which are people who

46:12

do or seek to do business with the government we only have to answer in the affirmative to one of these to have a

46:19

potential potential problem and I think we can answer the prohibited source one

46:25

pretty easily this this is an organization that the dowser seeks to do

46:30

business with the government their public/private partnerships which we learned earlier there are the other

46:36

provide services that our agency likely procures or that they would like our agency to procure in the form of training in publications periodicals

46:43

journals etc so there a prohibited source so the next question becomes

46:48

alright so there a prohibited source does that mean she can't accept the travel benefits and the answer is not

46:55

unless there's an exception and fortunately here we have an exception that's probably going to help us out so

47:03

while this is a good practice always in the interest of time this is one of the few times that we're gonna send you

47:10

immediately to the text of the exception so here we're at exception e gifts based

47:17

on outside business or employment relationships and it indicates that an employee may accept meals lodging

47:23

transportation other benefits resulting from the business or employment activity of the spouse when it's clear the

47:30

benefits haven't been offered or enhanced because of the employees official position not really helpful we're not talking about the employee

47:36

spouse main but when we get to 2 e 2 we get resulting from the employees outside

47:41

business or employment activities when it is clear that such benefits are based on the outside business or employment

47:47

activities and have not been offered or enhanced because of the employees official status echoes of 209 yes

47:53

precisely and that's not an accident so if we've asked those questions under and during

47:59

our 209 analysis is this something that all the board members get regardless of their status as federal employees or

48:05

employees of our agency we may be able to satisfy ourselves fairly readily that e 2 applies and would allow the employee

48:12

to accept these benefits I think what we have to advise though here and moving beyond what the piece

48:20

that we already know is that we can also forecast that this because the society

48:26

is a prohibited source for the agency that the very least other things that may be offered by the Society during the

48:33

course of the person's service on the board of directors or I keep calling the board of directors and I'm doing that as

48:39

a shorthand because it's an unusual it's it's a council and their counselors but

48:44

it's functionally the same thing as a board of directors so is that we have to

48:50

be very careful today I mean the Society is a membership organization right so so

48:56

there might be some things that are offered to the employee by the society during the course of her service so as a

49:01

Board of Directors member but there's also the potential potential for her to be receiving offers of a variety of

49:09

things from others from others who are members of the society and many of whom

49:16

may very well also be prohibited sources so I think that the the key here I would

49:22

I would ask you to consider when you're advising your employee is to sort of alert them to or even have an awareness

49:29

yourself about who are the likely sources of future gift-giving and then

49:36

think about ways to help the employee understand what are the indicia of

49:41

whether or not they can trust that whatever they would be offered by somebody other than the Society is

49:48

actually being offered consonant with the with the limitations that in here in

49:53

that exception that we just went over which is to say that it has to be clear that the offer was made and was not in

50:00

any way enhanced by or even as an initial offer made because of the

50:06

employees official position when you could see an example arising quite easily you know in the course of one of

50:12

the events put on by the society maybe she joins a conversation with a vendor of some technology that's used by

50:18

meteorologists and that vendor says you know I understand you work for this organization for this agency would you

50:24

like a free demo of our technology well she may think she's wearing her

50:29

society hat but the vendor may not see it that way the vendor may say no no I'm

50:34

gonna speak to you with your government hat on because I would like to bend your ear about about purchasing or

50:41

potentially purchasing our product and to help you along with that decision I'd like to provide you a thing of value

50:46

well here we have a situation where the gift rule very well may be implicating because the facts here do not in fact

50:52

they seem to contravene the idea that this is not being offered are enhanced because of her official duties so while

50:58

the things we're looking at immediately may be clearly covered by the exception you're exactly right that we may have

51:04

other situations that arise that would not be covered and it's really important for employees to understand the

51:11

limitations on the use of that exception that that doesn't just mean anytime you have your name tag on that says Society

51:17

member or a society director doesn't mean anything that comes your way okay and I think that is one of the inherent

51:24

difficulties when you're dealing particularly with with participation in professional Society events is that people from across the profession are

51:32

gonna know you in both guises right and they're not going to immediately recognize oh today I'm wearing my board

51:38

of directors hat and oh no today I'm in my federal employee hat and because that's not how I work I mean this is not

51:45

how life works so I think again it's it's it's it's true trying to help the employee navigate these things right so

51:53

that they can be a you know sort of like self-aware and and not again

52:00

inadvertently wind up violating the the standards of conduct because they just

52:06

weren't sufficiently capacitated to be making those kinds of those kinds of

52:11

distinction yeah and I think you're starting to see that throughout this process we're engaged in a little bit of predicting of the future

52:18

yes and quite a lot of training and I think I think that's that's true of any

52:26

outside activities analysis that there is a big training element there's a big education element that will help that we

52:32

need to do to help employees to navigate these situations that are going to arise and if they're going to navigate them

52:38

successfully they're going to have to get more than a general sense of the rules they're gonna have to have some sort of

52:45

specific concrete strategies for managing this stuff short of having a

52:51

lawyer accompany that everywhere you could go everywhere all right so so we

52:58

definitely have a potential concern on under the gifts rules but we want to make sure our counseling is is complete

53:04

there sure so what's next what's next is 2630 5.50 - which are the

53:10

impartiality provisions of the standards of conduct and Before we jump into 502

53:16

and I think this is something Patrick you and I have increasingly sort of made a point of in our education and training

53:22

on the issues of impartiality that while 502 is written in a very structured and

53:30

specific sort of way I think it's it's with a view to helping give employees

53:36

fair notice of circumstances that are most likely to give rise to questions of

53:42

impartiality that really what we're concerned about as a general proposition

53:49

is making sure that employees who have outside business and personal

53:54

relationships are not using any Authority associated with their

54:00

government position to basically provide distinct distinct benefits to people

54:06

that they know in a personal capacity right and it's so it's more of a misuse of position if we have to locate at some

54:12

place in the standards of conduct I would say that what we're dealing with here are we don't want we don't want any

54:17

circumstance where the public has reason to believe that you know if you know a government employee you're much more

54:23

likely to get benefits to get information to get access to you know that there's some sort of unfair

54:29

advantage that accrues to people who have friends who are in in the federal

54:34

government and have authority to provide and to confer benefits right and I think that's a good thing to keep in mind

54:40

because sometimes we do get kind of sort of a target fixation yes where we could

54:46

focus so much on the specific words of a specific provision that we kind of forget what it is we're trying to

54:51

accomplish here and the goal of all these rules and concert is to make sure that the public

54:56

can be confident that government employees are acting on the public's behalf and not on behalf of their their

55:03

friends and associates so if it looks like 502 and 208 and 209 and 205 and

55:09

subpart G are all working to do that it's because they are so you know while

55:14

we suggest you go through these one at a time to make sure you consider each of them it's also important not to lose

55:19

focus of the purpose and I think the thing that I want to point that I want to sort of emphasize here too is that

55:25

appearance concerns and these types of Lessmore and what appear to be sometimes even more informal kinds of ways that

55:32

employees can can benefit you know people that they know in a private

55:37

capacity are some of the things that have can have the greatest Dilla Terius effect on the own public's confidence in the integrity of the work we do

55:43

so in our currents in the situation that we're facing right now we've already

55:48

said and established that she has a 208 relation or will have a 208 relationship with with the society she's going to be

55:54

serving as a member of the board of directors that gives her an imputed interest in the financial interests of the society so we have a criminal

55:59

concern here right we know we have that criminal concern but absent that criminal concern we still have a very

56:05

real concern about making sure that she is not in some way advantage you know

56:11

giving advantages to the society that other similarly situated entities wouldn't have or that that she's

56:17

conferring some sort of like benefits to them through the use of her of her public office that she's engaging in

56:24

activities where they are a party or represent a party and that's getting closer into the actual language of 502

56:30

but I think just as a general proposition you know anytime you you have these these affiliations with

56:37

outside organizations we're going to want to make sure people understand be very careful about how and to what

56:44

extent you're engaging in government activities that will involve or affect

56:49

those organizations and I think there's some very specific ways for us to think about 502 in this case because at the

56:55

moment in time where she is serving on the board she does have that 208 yes the

57:02

financial interests are imputed to her I suspect that she did not get nominated

57:07

to serve on the board out of nowhere that there was no relationship at all with the society before this happened so it's

57:14

very likely that she has been an active member for some time so there may have been a 502 situation going back aways

57:20

hopefully we have advised on that and there may be again in the future usually

57:26

people don't serve on these boards for the rest of their lives so there's gonna be a period after her board service that

57:32

may invoke one of the coffered relationships for a former employer or she may return to her role as active

57:38

member and the public integrity idea doesn't go away because the financial

57:43

interest goes away right the appearance considerations persist in just a second when we look at subpart G the misuse

57:50

opportunity doesn't go away even the 205 situation it may be lessened but it

57:55

doesn't go away it's certainly possible so yeah that's just something to keep in mind if we move through time and

58:02

circumstances which of these specific provisions apply may change but it's not

58:07

all on-off for all of them yeah exactly so I mean with respect to the to the four corners of 502 as it's written the

58:14

impartiality provisions as it's written we 502 basically says that if the

58:20

employee has a covered relationship as that's defined in 502 then then they

58:26

should you know not participate in specific party matters if the person with whom they have a cover of a

58:31

relationship is or represents a party if they think a reasonable person with knowledge of the relevant facts would question their impartiality that's a lot

58:37

of verbiage okay I under the strict construction of that she clearly has a covered relationship by virtue of her

58:44

board of directors position as Patrick mentioned before she probably is already an active participant so she probably

58:50

already currently has a covered relationship right which would which would indicate that she shouldn't be participating in government matters in

58:56

which the the Society is a party or represents a party and to recap what

59:02

patrick said when she leaves if she doesn't resume her active participation she will have a covered

59:07

relationship by virtue of having left the position and then if she becomes an active participant she still got the

59:12

five major issues so I think we can get a link again we can get wrapped around the axle about this place in time and space where you have this magical

59:19

covered relationship when at the end of the day we're mostly concerned about is that you have you have an affiliation it's more

59:26

than just a casual membership and consequently you have a responsibility

59:31

to make certain that you not participate in matters that of you know where

59:38

someone could reasonably say it's really not appropriate for you to participate in it because you clearly have a strong

59:43

affiliation with this organization right also we're going to digress from

59:50

our methodology for the second time today oh no we ever so slightly out of order

59:57

because it makes more sense to do it that way but then we're going to come back to to misuse of position and

1:00:03

there's the reason for this is because we want to talk about the the specific provision finally we've gotten to the

1:00:08

rule that talks about conflicting outside employment and activity all they've been here for about an hour indeed and we finally if gotten to the

1:00:16

meat of this so I'm gonna just pull up the language for us quickly so we can we

1:00:22

can take a look at what 802 says yeah so if we look at 802 it says an employee

1:00:29

shall not engage in outside employment or any other outside activity that conflicts with his official duties and

1:00:37

then they go on to describe what the Reg means by that an activity conflicts with an employee's official duties obviously

1:00:43

if you have a statute that prohibits the employee from participating in this then it's it's it's a conflict for purposes

1:00:49

of Vader too or if by supplemental regulation you have said people may not

1:00:54

participate in these types of outside activities then obviously it isn't it is a it is a activity that conflicts with

1:01:00

their official duties but B is really the material one that we want to look at right now is if under the standard set

1:01:07

forth in 2635 402 and 502 it would require the employees disqualification

1:01:12

from matters so central are critical to the performance of his official duties that the employees ability to perform

1:01:17

the duties of his position would be materially impaired this is kind of one

1:01:24

of the reasons that we have the stop-go caution sign is because if you have

1:01:30

discovered for purposes of 208 an actual conflict of interest that you

1:01:35

ition or for purposes of 502 the impartiality provisions that there is a

1:01:41

breadth and scope of official duties that are going to be off-limits to your

1:01:48

to your employee by virtue of their undertaking this outside activity which

1:01:53

is to say if they're going to have to disqualify themselves from so many of their duties that it is going to

1:02:00

materially impair their ability to do their job then you that's considered to

1:02:06

be a an outside activity that conflicts with the employees official duties and you can prohibit the employee from

1:02:12

engaging in that outside activity so it gives you the authority to say as the

1:02:17

gun United States government as employer has to its employees have to be able to do the job that you've hired them to do

1:02:25

like and if a proposed outside activity is going to interfere materially with

1:02:30

that with the employees ability to be able to do that job then as as that employees employer the United States

1:02:36

government has the authority to say sorry you cannot engage in that outside activity right so we could imagine a

1:02:42

case where her job for the government is to manage this public-private partnership that's what she does and if

1:02:49

she were to sit on the other side of that mat that that that partnership that agreement that piece of business and

1:02:56

serve on the board of the Society she'd basically be sitting around at work all

1:03:01

day doing nothing right yeah I can't I can't do anything I can't pick up my phone I can't send an email because if I did I'd be in violation of a criminal

1:03:07

statute well that's not that's not an acceptable situation right so at this

1:03:12

point we can use 2635 our 5 CFR 2635 802 to say look you got a pic right right

1:03:20

you can work for us and continue to manage our side of the partnership or if you really really want to go work for

1:03:25

the society you know you you you can't maintain this position for the government right we can't have you

1:03:30

sitting here merely not violating the law right and I think and I think the

1:03:36

other another point to raise here though is I think that OGE also wanted to make

1:03:41

certain that agencies that were that were concerned about their employees engaging in certain kinds of outside

1:03:48

activities kind of as general proposition you know if you didn't have a statute that basically already prohibited it if you wanted to

1:03:55

as a general proposition you know make certain outside activities prohibited we

1:04:00

were going to make you do a supplemental regulation to do that so we're saying absent a statute absent a regulation

1:04:08

that a supplemental regulation then really the guidance that we're offering

1:04:14

agencies about when you can actually prohibit someone from engaging in an outside activity is when it will

1:04:20

materially impair their ability to do their government job so it sort of constrains the government it constrains

1:04:26

us a little bit as well about for arbitrarily or capriciously denying someone the ability to engage in an

1:04:32

outside activity I mean obviously it means we have to show cause for why we denied the person the ability to do the

1:04:38

outside activity right so you can't simply say well we don't like that organisation so you're not serving there or we're worried you'll be sleepy at

1:04:45

work if you have that job so you can't do it the standard under the ethics rule

1:04:50

for denying someone someone the ability to do an outside activity is that it

1:04:55

poses a conflict of interest great or you have a law or regulation supplemental regulation that gives you

1:05:00

the authority to do more than that right right okay so it's gonna be a

1:05:07

consideration and it's good for us to know that's there because that's really a deep source of both authority for us

1:05:13

as ethics officers but also a restraint on how we use it right and it's and

1:05:18

again when we're regulating people's personal conduct we have to be very careful because as part of that that

1:05:25

triangle of those three points that have rights and responsibilities our employees have rights as citizens yes

1:05:30

and it's important for us not to forget that because we can we can cause different kinds of problems for ourselves

1:05:35

absolutely all right so so we are gonna go backwards here briefly to look at

1:05:42

misuse of position and I think this is an area where you're always going to need to provide some advice mm-hmm there

1:05:49

were the possibility for misuse of position in the context of an outside activity is concrete its immediate and

1:05:57

there's more than one way that you can you can in two challenges here you know the

1:06:03

first thing we want to remember about misuse is what it's for right it's it's a prohibition on using our public office

1:06:09

using the authority of the government the the things that the government has given us as employees or loaned to us as

1:06:15

employees for the benefit of someone else for a non-government organization

1:06:21

so use of public office for private gain is the general standard and there are all sorts of ways that we might do this

1:06:28

in contravention of the rule and subpart G gives us some examples of that it

1:06:34

deals with things like use of government time and equipment in the case of outside activity is very very important

1:06:41

she's already indicated to us that she thinks she's gonna do at least some of this work on the clock well we're gonna have to clarify that that she will not

1:06:47

be doing any of this work on the clock if she's gonna go forward likewise you

1:06:53

want to make sure that employees understand that they cannot use government equipment or the time of

1:06:59

their colleagues race so if your subordinates and you say subordinate or colleague I would like you to assist me

1:07:06

by making copies of the minutes for the meeting well now you're misusing the

1:07:11

time of another you're misusing your own time you're misusing government equipment and material and to my

1:07:18

knowledge most agencies when they have their de minimus use policies tend to

1:07:23

exclude outside business activities so there's often a zero tolerance for those

1:07:28

those kinds of activities in if that's the case we need to make sure she understands that and I want to sort of

1:07:33

like I want to just emphasize that because it seems to me that particularly when you're talking about people

1:07:39

engaging in professional society activities that it's really incumbent to

1:07:45

to the extent that that you have de minimis use policies we're addressing

1:07:51

sort of the what is permitted in certain circumstances for certain purposes that

1:07:56

you know that you do your best to try to articulate you know how much time can you use for professional society

1:08:02

activities you know what are the resources that are available to you you

1:08:08

know so that so that employees again aren't guessing about what's appropriate or acceptable simply by watching how

1:08:14

other voice he whose or not right their time and resources so if you have again if

1:08:20

you have de minimis use policies I think if you could if many of you probably do have direct directives to employees who

1:08:28

are participating in professional societies because you know as we noted before sometimes it's in the interest of

1:08:33

the agency to to a lot to allow employees a certain amount of time I do some of that kind of professional work

1:08:39

so but yeah we want to be really clear and also if you have employees that are serving in various capacities so if some

1:08:46

people are working hold these kinds of positions and their official capacities and others in their personal capacities well your misuse analysis might be very

1:08:54

different for the two of them which may not be apparent to them right right you know if they're if they're looking at

1:08:59

their peers to see what's acceptable it may be acceptable for a very particular reason for a particular employee and not

1:09:05

acceptable for for another so other things to be careful of here how they're identified their misuse of title so you

1:09:13

know not not using the authority of their government position to appear to endorse the the worker for the Society

1:09:19

and want to provide very clear guidance about how they may refer to that and I think we have an opinion on that yeah

1:09:25

I'm actually there's there's a legal advisory it's was issued in November on

1:09:30

November 19th of 2014 so it's LA 1408 and the subject is reference to official

1:09:37

title and position by employees affiliated with outside organizations in their personal capacity so it's it's

1:09:43

absolutely spot-on with respect to this tight these types of activities and I think for our employee again the concern

1:09:51

is going to be if she's you know teaching short courses for the society

1:09:56

if she is acting as you know she's showing up and doing being a panel participant in conferences if she is

1:10:04

presenting you know research in any kind of an affiliated capacity with the

1:10:10

society is to make sure that you know she's being identified appropriately and whatever capacity that she is being

1:10:17

identified yeah so another case where we want to be clear which hat you're wearing and the final concern we have

1:10:23

here is use of non-public information because there is a nexus of interest in information the government

1:10:29

may have in this field of study that's something that's really important because it's it's hard to forget things

1:10:34

that you know even though they're not public and shouldn't be released so that that kind of counseling and training is

1:10:40

going to be important and you're gonna want to be as clear as you can be well I'm getting back to the use of title and

1:10:46

stuff too I know that this has come up in the past I've had this conversation with some agencies who have employees

1:10:52

who are very engaged in professional societies and you know there are some agencies who have basically said we

1:10:57

authorize you in certain circumstances to make reference to your official position in the conduct of an activity

1:11:04

that you may or may not necessarily fully squarely be there in your official duty capacity and you know I think that

1:11:10

there is there is the ability of the agency to decide for itself when it's appropriate when it's okay for an

1:11:17

employee to make some reference to their official position without it being a

1:11:22

violation of the standards of conduct you know where that's you know there's no concern that there's an an undue sort

1:11:30

of like misrepresentation right of the employee or the employees activities on

1:11:35

behalf of of someone else right so so part G gives us some general guidance about not misusing public office for

1:11:41

private gain and also some specific ways that that can arise and and gives us a

1:11:47

like that some some insight into how we can advise our employees to avoid breaking the rule here but you also want

1:11:53

to keep in mind the general prohibition which is generally you can't use your public office to benefit the society right right that that that general

1:12:00

prohibition doesn't go away absent one of the specific areas that we've identified in the rule being being not

1:12:07

in non evidence so you know I think there's both some general and specific guidance that you want to provide here

1:12:13

all right

1:12:19

I everyone in the audience didn't realize how long the standards of

1:12:24

conduct are and they conclude with our portion on outside teaching speaking and

1:12:31

writing which seems to be the most on point of the provisions that would apply

1:12:36

in this case and if we were to merely look there we would probably miss the whole game we would do a terrible

1:12:42

disservice to our employee if we began and ended merely with I 807 so we don't

1:12:47

have any indication here that she is likely to serve as an extra witness if we did we would want to look at 8:05 but

1:12:55

we again we don't have facts to suggest that so that does bring us to 807 which

1:13:01

deals with teaching speaking and writing finally finally and she tells us that

1:13:07

this is going to involve teaching speaking or writing so this is somewhere that where we're going to want to look and 807 tells us that it's our

1:13:16

restriction on compensation for teaching speaking and writing that relate to our official duties that seems like why

1:13:23

doesn't this rule just do everything for us because that's all it does that's just a compensation for teaching

1:13:29

speaking and writing that are related to our official duties so that we're gonna have a few terms that we're probably

1:13:35

gonna want to look at here that wants to stand out to me are what's compensation

1:13:42

rate and what's it mean to be related to my official duties right that seems to

1:13:48

be the the big Nexus here so again we we always recommend that you consult the

1:13:56

text of the law or regulation you're advising upon before before getting back to an employee but in this case we would

1:14:02

like to especially encourage that because this is a complex regulation

1:14:09

it's always a good practice but for though the purpose of the course we think it's extra important here because it's complicated so we're gonna we're

1:14:15

gonna dig into the actual text so here we have 5 CFR 2635 807 teaching speaking

1:14:21

and writing and it starts at except is permitted by paragraph a 3 of this section an employee including an s GE

1:14:28

shall not receive compensation from any source other than the government for teaching speaking Araya writing that relates to the

1:14:36

employees official duties well one thing though I want to emphasize because I

1:14:42

can't tell you the number of times I've been doing this for 30 years and I have to constantly remind myself 807 is a

1:14:48

compensation bar right it's not a teaching speaking and writing restriction it's a restriction on the

1:14:56

receipt of compensation for those types of activities if those type of activities are related to an employee's

1:15:02

official duties so that so for 807 to be implicated it either has to be

1:15:08

compensation involved right and this is another case where we talked about the

1:15:15

three parties and these arrangements each having rights and responsibilities on the other side of this bar live the

1:15:22

First Amendment rights of our employee you know we're talking about speech activity teaching speaking writing

1:15:27

expressive activity that is protected under the First Amendment of the Constitution so we want to be precise in

1:15:33

our reading and understanding of this rule so we do not unlawfully restrained

1:15:38

employees from engaging in speaking speech activity mm-hmm so let's take a look at those those definitions we can

1:15:46

start with related to relates to the the employees official duties so here we get

1:15:52

a big list of indicia about what it means to be related to an employee's official duties if the activity is

1:15:58

undertaken as part of their duties it is related that makes sense if it's identical to their duties clearly

1:16:05

they're related the circumstances indicate that the invitation was extended to the employee primarily

1:16:11

because of his official position rather than his expertise on the particular subject matter that rather than here is

1:16:18

really important mm-hmm so for this to apply we're we're looking at a case

1:16:24

where it's obvious they want the office to be speaking they don't really care about what's being saint's right so if

1:16:31

it's clear that says you know it would be really nice to have the deputy secretary for X department right that's

1:16:37

that's the big get for us is the title and that's the one that the the inviter wants to wave around that's that's kind

1:16:43

of what we're looking for with be and again it's rather than expertise on a particular subject matter so and this

1:16:49

is sort of like a like an anti subterfuge kind of like like we don't want organizations using teaching

1:16:56

speaking and writing opportunities as a way to slip some compensation to a government employee under the guise of

1:17:03

asking them to come teach speaker right so the invitation to engage in the

1:17:10

activity or the offer of compensation for the activity was extended to the employee directly or indirectly by a person who has interests that may be

1:17:17

affected substantially by performance or non-performance of the employees official duties so in the gift world we

1:17:23

call this a bad prohibited source so someone who can be helped or harmed by

1:17:29

the doings of this individual in the agency if that person is extending an

1:17:34

offer for compensation for writing teaching and speaking that the relatedness test that's is met and that

1:17:41

that kind of makes sense right because you need you again you don't want compensation for writing teaching or speaking to just be a guy is under which

1:17:49

we're giving someone compensation in exchange for really helping us out or

1:17:54

trying to influence them on and that's what I was point out with this is this is one of the clearest indicators that you have to be really careful when you

1:18:01

think about related to official duties because I think when we think about teaching speaking writing when you think

1:18:06

about okay well what makes that related to official duties the first thing that comes to mind is subject matter right so we're you I think as a shorthand we tend

1:18:13

to think oh eight oh seven is only going to apply if the if the teaching speaking of writing activity is a subject matter

1:18:19

related thing well this this C applies irrespective of what the subject matter is it's just if the person who's

1:18:26

offering the compensation is a bad prohibited source then that makes it related to duties and you can't receive

1:18:32

the compensation for it even if the subject matter of the teaching speaking writing has nothing to do with your official duties so we could imagine a

1:18:38

circumstance where our employees sitting on has been assigned to a source selection panel and one of the vendors

1:18:45

are one of the bidders for for that contract invites her to come give a lecture about guinea pigs I would like

1:18:51

to give her an honorary of X number of dollars well here even though that the

1:18:56

the lecture on you know guinea pig husbandry has nothing to do with what she does at work it may be technically related to her

1:19:04

official duties so yeah so that's something to keep in mind it's sort of a trap for the unwary yes

1:19:10

he makes a little more sense at it the information that is conveyed through the

1:19:15

activity draw a substantially on ideas or official data that are non-public information so you can't get paid to

1:19:22

give away the government secret data I think that kind of makes sense and you can see especially in you know and some

1:19:29

of the statistical agencies that have market-moving data that you know we definitely want to close this door to

1:19:34

people paying for for non-public information I would suggest though and when you have questions about that that

1:19:41

deal with whether or not there is non-public information that you take a

1:19:47

look at some of the examples too because I think the examples give you a much greater clarity about like if you have

1:19:56

if you have a topic that is somewhat related to what the employee does when and under what circumstance do you

1:20:01

trigger there related to duties provision you know whether it's just an

1:20:07

incidental reference to something as opposed to the entire presentation or the entire article or the entire course

1:20:13

is on the thing that is non-public information or that is subject matter related to the employees duties so I

1:20:19

just I would just advise you take a look at the examples because it will provide you with a much better notion of that

1:20:28

this isn't quite as black and white as as that definition might lead you to

1:20:33

believe right II finally we get into some of the subject matter so this is

1:20:39

sort of what you would commonly understand related to to mean and we have we have a number of examples here

1:20:45

so the activity deals in significant part with any matter to which the employee presently is assigned or to

1:20:51

which the employee has been assigned during the previous one-year period so if you're if you're being invited to

1:20:56

talk about something you're working on right now or we're recently working on or any ongoing or announced policy

1:21:02

program or operation of the agency mmm-hmm so if you're talking about what we're doing right now so we have big

1:21:09

initiative X we want someone to come talk to us about big initiative X that person can't be

1:21:14

compensated for for that about teaching speaking or writing in the case of a non

1:21:19

career employee so this is someone other than a career employee the general subject matter area industry or economic

1:21:27

sector primarily affected by the programs and operations of his agency so for those more senior officials those

1:21:33

non career folks this provision gets really broad yes it does ah for our

1:21:38

career folks it stays pretty narrow yes it's pretty much stuff going on right now and things that you've recently been

1:21:44

assigned to is you know this this sort of general area of things that our agency works on is only applicable to

1:21:52

our non career folks and then we have

1:22:00

some patience about the special government employee some some lessening of those and that makes sense because

1:22:07

these folks are are part-time people who have we have less of an interesting

1:22:12

curtailing their commercial and speech activities because they're part-time officials our employees a career

1:22:18

official so three and four don't concern us we're really looking at one in two here and I think this note is important

1:22:29

to remember because it really does add some substance to our analysis here so

1:22:34

the note says that this section does not preclude an employee other than a covered non-career employees so this is clarifying that for our career folks it

1:22:42

does not preclude them from receiving compensation for teaching speaking or writing on a subject within the

1:22:49

employees discipline or inherent area of expertise based on his educational background or experience even though the

1:22:56

teaching speaking or writing deals generally with a subject within the agency's areas of responsibility so what

1:23:02

this does not do is prohibit our person from talking about meteorology so that's

1:23:15

we're clarifying here that that's not that's not the bar that she can be in in

1:23:20

some key is compensated for talking about the way they're generally mm-hmm even though that's kind of what she works on so

1:23:26

that's that's one prong of our test the next prong is going to require us to

1:23:33

look at compensation and this is going to be just as much fun as the the rest

1:23:38

of the day which is to say a little bit backwards so it includes a bunch of

1:23:43

stuff I we start out with a general definition that looks not unfamiliar to

1:23:48

like the gifts general definition which the name includes everything under the southern front yes any form of consideration remuneration

1:23:56

income including royalties given for or in connection with the employees teaching speaking or writing activities

1:24:01

unless accepted under a specific statutory authorities such as 31 USC 13 53 that's payments for travel expenses

1:24:09

from outside sources that the government accepts 5 USC 41 11 that's the training

1:24:15

it's never an ocular word known as the training is the training reg which is for payments from 501 C 3 s for

1:24:22

attendance at a meeting or or for certain training for certain benefits that are associated with training yea

1:24:28

and or under an agency's gift except his authority so if your agency has the authority to accept a gift and they like

1:24:35

to do that that's not compensatory for our purposes but it does include

1:24:40

transportation lodgings meals provided in kind by purchase of a ticket by payment in advance or by reimbursement

1:24:47

after the expense has been incurred now if we were to stop there if we were to

1:24:53

stop there it would appear that our employee might be receiving compensation

1:24:59

yes because she's being right offered travel and related expenses by the

1:25:05

Society right so then we would have to go back and then say well what are you writing teaching or speaking about and

1:25:11

do you meet one of those prongs under the relatedness test yes and you know that would be tricky and we probably

1:25:17

have to do that on a per talk or per paper basis but we do have some

1:25:23

exceptions here much like the gift rules so it if we read on it does not include items offered by any source that could

1:25:29

be accepted from a prohibited source under subpart B if this part well we did look at that and we did have an exception so maybe

1:25:37

that takes care of it for us meals or other incidents of attendance such as a

1:25:43

waiver of attendance fee or course materials furnished as part of the events at which teaching or speaking takes place so if you just get the

1:25:50

coffee at the break maybe you get the sack lunch at the the lunch break and it's just part of being at the event

1:25:56

where you're delivering the information was and that's not compensation you know that stuff that's necessary for your

1:26:01

attendance so you know we don't have any evidence and that's the situation we're

1:26:07

looking at here but it's something to keep in mind copies of books or publications containing articles reprints of articles tapes of speeches

1:26:13

and similar items that provide a recording of the teaching speaking or writing activity so if you write the book and all you get is a copy of the

1:26:21

same the book that's not compensation and I think we can all agree that makes sense that this would be a you can't

1:26:29

have the recording of the tape you can't watch it on whichever video service you

1:26:35

provide prefer and then we really get to the meet here finally it says in the

1:26:40

case of an employee and this is complicated other than a covered non career employee so a non non career

1:26:50

I'd prefer non non career focus with a non non non career so in the case of a

1:26:59

career employee basically other than a non career person travel expenses consisting of transportation lodgings or

1:27:05

meals incurred in connection with the teaching speaking or writing activity why did we do that

1:27:11

so the rule giveth and the rule taketh away said that the travel expenses were we're

1:27:17

compensation and now it says they're not for pretty much everyone career official career folks for sure and that's what

1:27:24

she is she's a career person so for purposes of 8:07 for purposes that cover the compensation bar if you're a career

1:27:32

official you may accept travel expenses you know transportation lodging meals

1:27:38

that are incurred in connection with the teaching speaking or writing activity notwithstanding that they are related to

1:27:44

your official duties as that is defined because we have excluded from the definition of compensation and

1:27:50

we did that somewhat under duress I guess I could say safely or because we

1:27:56

were compelled to course by a court yeah there was there's a lawsuit and said you

1:28:01

got to change it so it's been changed so we didn't do that just just to make your

1:28:06

life difficult we did it because the rule didn't used to exclude that and then there was litigation and as a result it found it basically other than

1:28:14

non career officials essentially have a right to the travel expenses that facilitate their speech activities even

1:28:19

when those are related to their official duties so yeah this is an area where we we have to remember in these counseling

1:28:26

situations that there are multiple parties each of whom have rights and

1:28:32

responsibilities and we have to keep that in mind so in this case we have a

1:28:37

career official all she's receiving this travel payments you know transportation

1:28:45

reimbursement or in-kind transportation so basically that's that's the end of our analysis but they do seven now if

1:28:52

you can pull up the note two paragraph a two three little eye that would be great I would appreciate if you do that I'm

1:28:58

gonna cut I'm gonna call your attention to this not to just further aggravate you and have you be like pulling your

1:29:04

hair on saying what now what does this mean but but I think it's important because it's it's basically saying you know

1:29:09

notwithstanding whatever 8:07 a you know says there are other authorities like

1:29:16

209 18 USC Section 209 which we talked about was that supplementation supplementation of salary criminal

1:29:23

statute where in some circumstances those other authorities may limit or entirely preclude and employees

1:29:30

acceptance of travel expenses so and let me give you for instance in that if the

1:29:35

employee is engaging in the teaching speaking of writing as part of their official duties they have been assigned

1:29:41

as part of their official duties to engage in teaching speaking or writing then 807 is not an authority for them to

1:29:50

accept compensation from a non-federal source for those expenses so if it's in

1:29:59

your official duty capacity that would be one one place where you

1:30:04

would not be able to use 807 as a way of accepting compensation from from a

1:30:09

non-federal source to pay for you to go teach speaker write an official duty capacity right no I think that's really

1:30:16

important that that's one of the reasons we asked you to do a separate analysis for each of these authorities because

1:30:22

you may have a specific carve out in one case where another law or regulation may

1:30:27

prohibit the activity altogether right and just because you're not violating one rule doesn't mean you're not violating any rules

1:30:33

Thanks and that's an important thing to keep in mind especially when there's one rule that seems to be perfectly on point

1:30:39

it's not the only one right we have this whole list multiple pages of laws and

1:30:44

regulations in each of them needs to be considered under their own terms right I mean if we can go to the use of title or

1:30:51

position on and if we have that in included in this

1:31:00

yeah here we go so um 8:07 has its own reference to official position of

1:31:06

provisions that I would just alert you to because they are in addition to the general proposition that you're not

1:31:13

supposed to use your title or authority associated with your position to you know to sanction or endorse the outside

1:31:19

activities of an organization etc but there these are specifically addressing

1:31:24

situations where you would be identifying yourself in the context of teaching speaking and writing and

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effectively it's it's saying you can you can include a permit the inclusion of your title or position as one of several

1:31:38

biography chol details if it's given to identify you in connection with your

1:31:43

teaching speaking or writing but those the title ur position is not supposed to be given any more prominence than the

1:31:48

other significant biographical details and with respect to scientific or

1:31:54

professional journals which is what we would be dealing with with our employee they may user permit the use of their title in connection with that provided

1:32:02

that it's accompanied by a reasonably prominent disclaimer basically saying

1:32:07

that the views expressed in the article are those of the individual and don't represent the views of the agency or of

1:32:13

the United States I do want to alert you to there is another OGE advisory opinion that talks

1:32:20

explicitly I mean specifically to these specific teaching speaking and writing use of official position provisions to

1:32:29

to talk about sometimes when you have to use a little bit of exercise of judgment

1:32:35

and not read these provisions to strictly such as to reprimand an

1:32:41

employee who through no fault of their own because the journal just decided that they couldn't they didn't have room

1:32:46

in the journal to publish all of the disclaimer or to publish all of the significant biographical details this

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this opinion which is 10 X 10 at 10 X 1 I'm sorry so it's a 2010 opinion it was

1:33:00

the first one in 2010 which basically talks about you know when an employee is

1:33:08

engaged in teacher speaking and writing when it is that they may you know

1:33:14

considerations that you have to that you have to take into account in interpreting these provisions of of 807

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because what we're really trying to avoid is any circumstance where it isn't made sufficiently clear to the person

1:33:29

who's reading this on whose behalf these representations are being made so it's it's mostly a matter of let's let's make

1:33:36

sure that we're not purposefully or even inadvertently misrepresenting the

1:33:41

viewpoints in in the in the writing activity for example right and this gets of some of the propose of things you

1:33:47

know how we achieve that objective may vice the the specific magic words that

1:33:53

must be used right exactly okay great okay I think we've come to

1:33:59

our final or our final final provision in the standards of conduct which are fundraising activities

1:34:06

now the fundraising rules in in 808 are separate and apart from any of the

1:34:13

restrictions that the the combined Federal Campaign would impose on fundraising in the federal workplace so

1:34:21

irrespective of what I'm about to say with respect to any fundraising activities that the employee might be

1:34:27

asked to engage in on behalf of the society one thing is abundantly clear is that they may not engage in fundraising

1:34:36

that would be you know that would be restricted by the combined Federal Campaign so the combined Federal

1:34:41

Campaign basically says it's the only authority under which employees can engage in and agencies can engage in

1:34:48

fundraising in the workplace on behalf of nonprofit organizations soliciting

1:34:54

monies from federal employees so those are kind of the conditions where CFC apply so so what I'm about to say with

1:34:59

respect to 808 is assuming that they're not doing something that would that would that would violate the CFC

1:35:06

provisions so what anyway basically says is that you know employees can engage in

1:35:12

personal fundraising on behalf of nonprofit and other organization well nonprofit organizations in their

1:35:20

personal capacities and the restrictions that that that are imposed on that are they may

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not personally solicit funds or other support from a subordinate employee or

1:35:33

from someone who's known to them to be a prohibited source so your employee would

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not be prohibited from engaging in fundraising activities on behalf of the society necessarily provided that they weren't soliciting funds from their

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fellow employees who are subordinate employees or from you know entities known to be prohibited sources for the

1:35:52

agency likewise would do there's are limitations on the use of their title

1:35:57

and position or any authority associated with their public office to further the fundraising effort so so how would this

1:36:06

you know or what other sort of limitation should we want to consider with respect to the fundraising engaging and fundraising on behalf of the outside

1:36:12

organization I think that some agencies have an ability to do official

1:36:18

fundraising we have statutory authority to engage in official fundraising if our employee is sitting on the board of

1:36:23

directors for the society then she would not be able to participate in any official fundraising activities on

1:36:30

behalf of that society without being concerned about 2:08 because that would be engaging in an official duty activity

1:36:36

official fundraising on behalf that would clearly have a direct and predictable effect on the rest of the

1:36:42

society right so official fundraising would be off the table right I would argue that in connection with any sort

1:36:49

of fundraising events likewise the employee would not be able to for example give an official speech right and at a fundraising activity on behalf

1:36:56

of the Society so so those are really the the limitations that that the

1:37:05

employee has to be made aware of I think that they would want to be careful not to have them there themselves associated

1:37:12

with the fundraising acts let's say the Society goes out with and they're having a fundraising event and they're advertising it and they're you know the

1:37:20

employees should be cautioned against in any way being identified with the fundraising activity in her official

1:37:26

capacity so we are grateful to have NOAA meteorologist such-and-such person

1:37:31

speaking at our a super-great fundraiser to raise money for the society make sure that doesn't happen right yeah

1:37:37

and that's not just the case with this employee it's in case with any of our employees is that we have to be very careful about how they're presents their

1:37:45

participation their identity as a federal employee is being used in any way to promote the event and I think

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anytime we're dealing with service on the board or service with a nonprofit organization even if an employee doesn't

1:37:56

foresee fundraising as an issue to provide these cautions because they do

1:38:01

come up right that's the Tao these organizations are funded it's a big part of how they continue to exist and

1:38:07

there's always that possibility that even though you didn't foresee it you become involved somehow and being

1:38:12

prepared for that eventuality or to know that you need to come seek advice because there are rules it's a really

1:38:18

good service that we can provide to our employees and I would say just kind of again coming back from this gets dicey

1:38:26

because when we when we engage in fundraising in our personal capacities you know to the extent that we hit up

1:38:31

our colleagues right first of all we shouldn't be doing that on government time and government space and to the

1:38:36

extent that we do that with people that we are clothing you know most closely you know associated with it in any kind

1:38:42

of a social capacity you know I think you still have to be kind of careful about being you know being coercive

1:38:48

about those kinds of things so I think particularly when you're doing it as a principal of an outside organization

1:38:54

like as a member of the Board of Directors of an outside organization I think you have to be a super super conscientious about just because this is

1:39:02

my buddy that I hang out with just the sheer dynamic of the position that you now hold it could create a little bit of

1:39:09

maybe a sense of compulsion on the part of the person who's being who's being solicited so again is it it

1:39:16

would it be out now prohibited under under 808 maybe not but it might be ill-advised right and I think this is a

1:39:22

good good time to remember the purpose of some of these rules right is that you know we don't want people to feel

1:39:28

bullied into into contributing based on their their official relationships with

1:39:33

folks so you know there might be things that we haven't specifically identified that could create that circumstance and

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you want to be careful about that because you know it's it's not a nice thing to do to folks right right precisely

1:39:45

so that does bring us to the end of our authorities and we would like to to

1:39:50

remind you that these are the authorities you have to consider for career officials for non career

1:39:57

officials there is a whole nother body that you have to think about you have to think about the restrictions at 5 CFR

1:40:03

26:36 I do not forget that completeness again is really really important so those

1:40:09

restrictions on outside earned income for non career officials really important or if you prefer non non non

1:40:16

career officials but so this is this is the analysis for career folks when we're

1:40:23

talking about covered non career officials we need to remember those those additional restrictions and in

1:40:28

your table of applicable authorities we've provided those for completeness sake so consider yourself EE warned so

1:40:37

that that concludes our walk through of the exercise we have just a few minutes remaining

1:40:42

for those of you who made it all the way through our talk today we hope this has been helpful to you we would like to

1:40:48

open it up for any questions you might have thank you star 1 you will be

1:40:59

prompted to record your name please be sure to unmute your phone once again if you'd like to ask a question please

1:41:04

press star 1 thank you

1:41:26

I think we could do a whole other hour about how to do this in your official capacity yeah yeah I don't I think that

1:41:33

would have been cruel and unusual strange dream the attention spans a little bit we haven't did a very good

1:41:48

job or everything on the sleeve for the abandoned yeah

1:41:55

well this will be available online we always like to remind folks of that that you know if you had to bow out at any

1:42:02

point in time during this presentation you can go back and watch the recording it's available on the course page as

1:42:07

soon as we're done here so assist soon as we end the broadcast those recordings are available and that's true for all of

1:42:13

our courses so if you're looking for training on different subjects that is not outside activities that's very

1:42:18

likely there's something in the Institute for Ethics government library that may meet some of your needs and as

1:42:24

always if you have ideas things that are not in there and you said it would be really nice if they had do let us know

1:42:30

because we do take your suggestions we try and meet them where we can and really we do this for your benefit so if

1:42:36

there are things you need that we're not providing let us know because that's what we want to be doing

1:42:48

we have no questions coming okay well it looks like there there are no questions if you think of things as ever you can

1:42:56

feel free to reach out to your desk officer or army or Cheryl we'd be happy to help you and again you know please

1:43:02

fill out your course evaluations let us know if there are things that we could provide that we haven't provided already we thank you very much for joining us

1:43:09

and I hope you have a good afternoon and happy Talk Like a Pirate Day our