series uh my name is Patrick Shepard and I'm very pleased to be joined today by Cheryl Kan peki welcome Cheryl thanks

0:06

very much Patrick and today we're kicking off part one of our massive open online course on seeking and negotiating

0:13

for employment uh as our employees uh prepare for presidential transition uh we need to prepare to assist them uh in

0:20

their exit from government service among at least the the appointees and we want to make sure that you have the tools

0:27

available to properly counsel those officials so as part of our transition Readiness series we are offering this massive open online class today session

0:34

one we'll be back on Thursday for session two where we'll be going over the exercises uh you'll have a day to uh

0:42

look over those exercises give them a try and test your knowledge we'll also be back next Thursday for uh the next

0:48

broadcast in our transition Readiness Series where we'll be discussing training strategies for career sces uh

0:56

to prepare them for the presidential transition I think we get very focused on political and presidential appointees

1:02

coming and going during the presidential transition but there are some unique stresses that happen for the members of

1:07

the career sces we want to talk about some of those issues such as uh what are the ethics considerations when you are

1:12

acting in a position uh and likewise you know what kind of interactions can you have with former colleagues so we're

1:17

going to be giving you some training tools to help you uh brief those uh SE career senior executive Service uh

1:23

employees to prepare them for those eventualities uh well we only have an hour today to get started on the seeking

1:30

negotiating employment massive open online course so should we get to it cherl yes absolutely if you could pull up the slide deck that would be great

1:37

um I I wanted to just sort of hop in here and say that that I I wanted to Echo some of the things that Patrick

1:43

said which is you know in a in a transition season we obviously are anticipating a goodly number of our

1:48

political appointees um will be leaving government service and so our seeking and negotiating and post-employment

1:55

portfolios for advice and counsel are going to be pretty pretty rigorous and pretty robust um but I would also argue

2:01

that it that um now or even before now we should be doing a training function

2:06

on seeking and negotiating for employment as well because I know that in many instances unfortunately um folks

2:12

don't find out about that their employees have been actively seeking or negotiating until they come in for post-employment advice and unfortunately

2:20

sometimes that's a little too late for folks and they may have already tripped over a criminal statute or two um before

2:26

they've ever walked out the door so my advice to you is you know use today's broadcast and and the information that

2:33

we give you um in this moo to um to engage in some prophylactic uh Education

2:39

and Training particularly for your politicals but you know kind of agency-wide because I think that uh

2:44

these types of transition phases are times when retirees like to take advantage of the moment to sort of you

2:50

know Grace you know gracefully exit the scene as well no this is definitely an area where uh we can only answer the

2:55

questions that come to us and if we're not uh sensitizing our employees they need to come seek advice uh all the

3:02

knowledge in the world doesn't do our agencies any good that's absolutely right um and just just to let everyone know too in addition to talking about

3:08

subpart F of the standards of conduct and obviously the 208 implications that are in the negotiating piece of that

3:14

we're also going to be talking about stock act notifications as well so negotiating notifications and recusal

3:19

notifications for for our public filers so if you were wondering if that's going to be part of today's session it is indeed and we'll be getting to it a

3:26

little bit later so if we can go to the first slide here um hopefully you all have a copy of subpart f um handy which

**Subpart F-2635.601(a)**

3:32

is in the standards of ethical conduct 2635 601a um because that's where these

3:39

restrictions reside and we really are going to be dipping in and out of subpart f today so if everybody could pull their regulations up and go to 2635

3:47

601a because we really need to to think about um what it is exactly that subpart

3:52

f is addressing or what it is that subpart F uh requires so if we get to 26 35.6 one

4:00

this is the overview of the restriction for subpart f um says the subpart contains a disqualification requirement

4:08

that applies to employees when seeking employment with persons whose financial interest would be directly and predictably affected by particular

4:14

matters in which the employees participate personally and substantially specifically IT addresses the requirement of at section 208a that

4:21

an employee disqualify himself in participation in any particular matter that will have a direct and predictable effect on the financial interest of a

4:27

person with whom he's negotiating or has an arrangement concerning perspective employment Beyond this statutory

4:32

requirement it also addresses the issues of lack of impartiality that require disqualification from particular matters

4:38

affecting the financial interest of a prospective employer when an employes actions and seeking employment fall short of actual employment

4:44

negotiations so that's a big long paragraph that we're going to parse out here in a moment just so that we can

4:49

kind of get give you Clarity on what subpart F actually does what it doesn't

4:54

do and how you can sort of bring a general sensibility to it um and and then we'll be getting into the

5:00

particulars of each piece of that so we get out the next slide please Patrick so when we're talking about the

5:06

seeking restrictions we're essentially Patrick talking about it's a disqualification requirement right right yeah requires us to recuse and in what

5:15

circumstances it required disqualification like what has to be present or really what is the disqualification requirement trying to

5:20

get to or get at so we have uh the statutory requirement that's referenced in in 208 which we're all familiar with

5:25

we uh have a duty to recuse when we're negotiating uh for post government employment or outside uh employment

5:31

outside the government but this seems to extend that a little further and says that you know when we're seeking employment uh which may be prior to a

5:38

negotiation uh we also have a duty to disqualify to manage those um appearance

5:44

concerns and also I think to protect ourselves from inadvertently uh coming near to the criminal prohibition right

5:50

so so in in effect when we're talking about the disqualification requirement just as we talk about in 208 what what

5:57

the Restriction is trying to do is it's trying to it is is trying to protect government processes so it's focusing on

6:03

what the employee can or cannot do for the government when they're in a situation where they are looking for a

6:09

job outside of government so if I can have the next slide please so I just want to clarify here

**No requirement to cease and desist job search activities**

6:16

that it's a disqualification requirement that reaches to the matters that the employee is working on and requires the

6:22

employee to not participate in certain government matters if those matters could affect the financial interests of

6:28

someone with whom they're they're seeking a prospective employment what it isn't is a requirement that they cease

6:35

and assist certain job search activities so this is very similar to our experience with uh section 208 which is

6:43

that it's not uh a requirement you can't hold certain Holdings or have certain Financial interests it's a restriction

6:48

on what kinds of work we can do for the government um so where we have a seeking

6:53

situation uh that restricts the activities that we can do at our agency our employees can do uh for the

6:59

government exactly so it is not reaching to whether or not an employee can actually seek employment outside of

7:05

government it's not reaching to um to requiring people to not seek employment

7:12

um what what it is saying is that depending upon the circumstances and with whom you you happen to be seeking

7:17

employment you may be very restricted in the work that you can continue to do for the government while you are

7:23

simultaneously seeking employment with a prospective employer and in a little a little a little bit later we're going to

7:30

talk about you know what happens in those circumstances because Patrick I'm sure you can well imagine circumstances

7:35

where particularly when you're dealing with higher level of officials where depending on you know who they're

7:41

seeking employment with they might be disqualified from an enormous part of their portfolio such that it's going to

7:47

be really hard for them to actually continue to do their work and seek employment simultaneously no that's very

7:52

easy to picture you know depending on the the kinds of Employments that employment might be seeking and the kinds of work they do for the government

7:58

so you could see a lot of overlap there that could significantly constrain their ability to act on the government's

8:05

behalf yeah so we are going to talk about like what what can you Avail yourself of like how can you handle

8:11

situations in which you may have um these extraordinary circumstances where someone is is seriously um uh their

8:18

their work is materially impaired because of their seeking employment situation but I just want to emphasize

8:23

that the seeking employment um employment restrictions in subpart F do not prohibit anyone from seeking

8:30

employment um and it's just simply not what the what the what the the the

8:35

section deals with next one so as as Patrick said and as we just

**Criminal provisions of 18 USC section 208**

8:41

read in in 601 subpart f is effectively um implementing two

8:47

different authorities right so we it mentions explicitly the 208 and the negotiating and arrangement for

8:53

perspective employment aspects of 208 so subpart f is an implementing regulation

8:59

Force 208 with respect to negotiating for and having arrangement for prospective employment okay but it is

9:07

also broader than that in that it is also implementing 101j of the executive order 12674 which

9:16

is the principle that deals with an employee shall not engage in outside employment or activity including seeking

9:21

and negotiating that could conflict with with their with their official duties I think it makes sense to to

9:28

group these together in subpart F because the way that employees experience this is a sort of uh a

9:35

timeline Continuum between seeking all the way to negotiating until they finally leave government employment uh

9:41

so it makes sense to to house all the restrictions and uh the implementing regulations together it is it does um

9:47

andan if you can have if give me the next slide in a minute and i' I've tried to come up with some sort of a visual representation of how subpart F works

9:53

because I personally am not a visual person but I know a lot of people are um so if think about it this way okay sub

10:01

partf is the implementing reg for 208 and now 208 is a criminal restriction okay and it's only going to kick in once

10:08

an employee is actually negotiating for or has an arrangement for prospective

10:13

employment the tricky piece here is and we're going to talk about this a little bit more in a moment exactly when

10:20

someone is arguably negotiating for employment such that they're actually in

10:25

criminal 208 land right because we all know a job search there's a lot that goes on when you're

10:31

looking for a job there be several steps it can be rather attenuated there could be more than two parties involved uh so

10:37

it's It's tricky to know you know when you move from the seeking to negotiating and we want to be careful about making

10:44

sure we don't get too close to that criminal line exactly so the disqualification in subpart F clearly is

10:50

intended to reach to the 208 uh restriction which is you know when you're negotiating or having an

10:55

arrangement you're you're prohibited from participating personally substantially a matter that could affect your prospective employer okay next

11:02

slide please but what o elected to do when in

11:08

sort of implementing the uh executive order Provisions that also reach to you

11:13

know preventing conflicts of interest when an employee is um engaging in an outside activity or or negotiating for

11:19

employment OG said okay it's really not clear exactly when you start negotiating

11:24

for employment so people could be stumbling into a 208 violation with

11:29

without even really being aware of it right so what we're going to do is we're going to take that self-same 208

11:35

disqualification requirement the exact same disqualification requirement the same criteria for disqualification and

11:41

we're going to say okay the regulation is going to give you the same

11:46

disqualification requirement but a lot sooner so once you start engaging in

11:52

pre-negotiation Communications toward prospective employment subpart f is

11:57

going to require the same dis qualification for for you as it would if you were actually negotiating for

12:03

employment under 208 yeah I I tend to think of it kind of like a fence around a swimming pool uh you know there are

12:09

places inside of the fence where you're not drowning yet but we put the fence ways back from the pool to make sure

12:15

that uh people are safe and that we don't have people inadvertently drowning in the pool uh I think support F kind of

12:21

does the same thing for the the criminal violation that's possible in this process exactly exactly so if you give

12:27

me the next slide please so that's the rationale behind subpart f subpart f basically says we want to create enough

12:33

of a prophylaxis so that people are disqualifying themselves from matters well before they could arguably be

12:40

considered to be negotiating for employment for purposes of actually being in violation of a criminal

12:47

statute so as the ethics official um I I I think there are basically two pieces

**Can the employee's official duties affect the prospective employer?**

12:53

to the whole when does the subpart F restrictions when do they kick in one is one is you know is the employee actually

13:00

seeking or negotiating for employment which is a legiate legitimate question to ask and we're going to get into that in a minute but at the end of the day as

13:06

the ethics official the only time we're really really concerned about whether or not someone is seeking or negotiating for employment is when their employees

13:13

official duties can actually affect the prospective employer so subpart F does not apply to anyone seeking or

13:21

negotiating if they don't have duties that can affect some the prospective

13:26

employer so we have to have that Nexus between the official duties and the prospective employer much like we would

13:31

in a 208 analysis before we really need to worry about the disqualification requirement because there just wouldn't

13:37

be anything to disqualify from right so as ethics officials I think the the official duties affecting the

13:42

prospective employer piece of the puzzle is the one that we really want to be honed in on because let's face it more

13:48

often than not by the time an employee comes to you to ask for advice chances are it's it's probably without question

13:54

they're seeking employment already you know unless they're asking you for when when will I trip over this but at the end of the day our focus our focus is

14:02

going to be hugely on Discerning whether or not the employee has any matters that they would need to immediately recuse

14:08

themselves from once they are actually seeking employment next one please so again and when we're talking

14:14

about official duties affecting the prospective employer folks this is the same 208 analysis that we do for you

14:20

know any 208 conflict of interest which is would the employee be participating personally and substantially in a

14:26

particular matter and is the financial interest of the prospective employer are going to be directly and predictably

14:31

affected by that matter so it's it's that same basic 208 analysis that we're we're deing with here so yeah we're not

14:38

changing the game here this should be this should be familiar uh for those of you who are familiar with 208 right okay

14:44

so the next slide now when it comes to you uh particularly educating your

**Is the employee seeking employment?**

14:50

employees I would argue that I think the trigger for seeking employment like when

14:55

is the employee actually seeking employment is probably the bigger EMP empasis because I think what we want to

15:00

encourage employees to do is to the minute they're engaging in an activity that is a seeking employment activity is

15:08

to encourage them to you know come see you or come get some advice once they know they're in actually engaging in an

15:15

activity that constitutes seeking yeah that's sort of an unfortunate part about our fence around the pool is that unless

15:20

we educate employees about what the fence looks like it's invisible to a lot of them uh so the education Point has to

15:25

be um around indic to employees and helping them to understand when they

15:31

need to come to us for advice so that we could advise them about any restrictions that will come from their seeking employment right so so as I said you

15:39

know when when we're talking about ethics officials it might be that our primary focus is on on susing out whether or not they actually have a

15:45

conflict with their prospective employer for the employees I think the key for them what we really just want them to be

15:50

able to do is to discern when they're engaging in activity that might trigger subpart F and let you help them figure

15:57

out the piece about whether or not they have any recusal obligations so let's before we get into

**2635.603(a)-Non-federal "employment" defined**

16:05

like what is seeking and what is negotiating I think it's always really important that we make sure we fully understand the breadth and scope of

16:10

subpart f in its totality so let's take a second to look at the definition of employment so that we know what types of

16:18

quote unquote employment activities are are covered by subpart F so if you look at 603a 2635 603a

16:29

you want to read that real quick so it looks like employment means any form of non-federal employment or business

16:36

relationship involving the provision of personal services by the employee whether to be undertaken at the same

16:43

time as or subsequent to federal employment it includes but is not limited to personal services an officer

16:50

director uh employee agent attorney consultant contractor General partner or trustee okay that's a longer list than

16:57

I'm used to yeah it is a longer list and I think there there are a few things I want to point out here that I think we

17:02

just need to be really um sort of alert to um the first is obviously this is

17:08

dealing with non-federal employment or business relationships so when you have employees who are seeking employment

17:14

with another Federal agency I'm not saying that there can't be any appearance concerns to take into

17:20

consideration but subpart f for the most part really doesn't apply doesn't contemplate those right um the other

17:27

thing is that the subpart F Provisions are going to apply not just for people in their post employment like

17:33

post-government employment seeking job search but for people who are just engaging in outside employment um like

17:41

that's concurrent with their federal employment right and I think a lot of employees don't don't understand this

17:46

Nuance they say well no I'm not planning to leave government so I I don't need seeking and negotiating counseling because I won't need post-employment

17:52

counseling uh but it's important for them to realize that this applies regardless of whether or not your

17:58

activity is going to to be taking place uh concurrently with your federal employment or after and then finally I just would like

18:04

people to pay extra close attention to that laundry list of um you know of

18:10

things that can be undertaken which involve personal services I mean clearly we have officer director employee I

18:16

think those kinds of things are fairly we used to seeing those in the in the 208 list in the statute but these other

18:23

ones these other ones agents attorney consultant contractor General partner

18:28

trustee so the contractor agents you know consultant obviously these are

18:35

these are not the same as sort of employer employee types of relationships that we're used to seeing it's more

18:40

expansive than that it's more expansive than that so just to just to kind of just as a a heads up um make sure you're

18:47

aware of all the contexts in which the seeking employment rules might apply right basically if you're if you're uh

18:52

engag in activity looking for personal services for compensation type Arrangements you're there regard of

18:59

whether or not the criminal statute names those as as imputed positions exactly so it's sort of an amalgam of

19:04

the 502 universe as well as the 208 Universe which I guess is consistent with our goal here which is to expand

19:10

these 208 restrictions uh to those appearance concerns as well exactly exactly okay so we got the next slide

19:20

please so what is seeking employment and this is the big question which is you know how are we defining seeking

19:26

employment for purposes of these uh the provisions in subpart F and here if we

19:32

look at 2635 603 B1 so looks like an employees begin

19:38

seeking if he has directly or indirectly engaged in negotiations for employment with any person well we I don't want to

19:45

jump the gun here exactly yet Patrick but you're right I mean and and this is this is an very expansive definition um

19:52

it it goes into when an employee is seeking it talks about when an employee

19:58

isn't seeking it talks about when an employee is no longer seeking so it's a

20:03

very expansive definition so I kind of want to take this a chunk at a time um

20:08

because I think it it otherwise can cause a a degree of confusion that when we break it down into smaller chunks may

20:15

be a little bit more man that does it goes on for you probably 700 words or so it's yes it's it's inelegant shall we

20:25

say parsimonious I don't know you know it's not it's lacking in those those fundaments I think so I mean and it may

20:31

seem ridiculous to start with what doesn't meet the definition of seeking employment but there's there's there's

20:38

um there's method in the madness um so we're going to start with a paragraph

20:44

B1 two little I A and B paragraphs A and B

20:51

um oh there we go I found it yes um so the first the fir the first thing that

20:56

we're GNA focus on here is you are not seeking employment you have not begun

21:02

seeking employment if you've only requested a job application so for any type of employment that requires has

21:07

some sort of like a form you have to fill out or an application process your mere request of an application is not

21:13

going to be sufficient to trigger the seeking employment it's not it's not yet seeking employment okay and that's fairly straightforward it's paragraph B

21:20

that gives people that to that sort of spins people around and around um the

21:26

second one is focusing on you really have to focus on the duties that the

21:31

employee is performing because While submitting a resume to a prospective employer is typically going to be enough

21:38

to get you into seeking employment what paragraph B is saying okay hold on a minute if you are working

21:46

on matters which we call matters of general applicability that can only affect an industry they're not affecting

21:53

discrete entities they're only affecting entire Industries or class of of of of

21:59

entities then merely submitting a resume as a first course of action you're not

22:05

yet seeking employment okay you would only be seeking employment once you got

22:11

a response back other than a rejection to your Overture okay so let me see if I

22:17

understand that sure okay so if I'm an employee who I don't know say I work on regulations their particular matters of

22:23

general applicability and um I send a resume to a company that will be subject to that

22:31

regulation and all I'm doing is working on that top tier regulation I'm not seeking employment until I hear something and

22:39

then I am seeking employment for purposes of that regulatory matter yeah so exactly in in in things like

22:45

regulations and things like policies and things where where where the the matters

22:52

themselves are are are affecting an entire group of entities equally okay so

22:58

if I'm the employee I think that I would like to receive advice anyway right exactly I I don't

23:06

think I'd feel really comfortable making that determination on my own so for my purpose it would probably be enough to

23:12

say that when I've submitted a resume I should get clarification about

23:18

the kinds of work I can continue to participate in I think that's I think that's exactly right because at the end

23:24

of the day typically sending a resume is going to be enough to trigger the seeking employment Provisions right it's

23:31

only in this case where you've put out a resume to one of several or to several

23:37

um you know let's say regulated entities and all you work on are regulations right all we're saying is unless or

23:44

until you hear back from one of them you simply don't have a disqualification requirement but the minute you hear back

23:49

from one of them you're going to have a disqualification requirement so at the end of the day my advice again as you

23:57

were saying Patrick to EMP when you're talking to employees counseling employees is to not provide them

24:02

necessarily with this sort of exception to the seeking but to insist if you're sending a resume out right and the

24:09

advice is when you send resumés out under seeking employment we advise you to come talk to us about whether or not you have any disqualification

24:15

requirements right that we don't need to overburden them with this piece um you

24:20

know so that they've got to then far it through whether or not they need to come talk to you right you know no the simple rule of thumb for me is if I've sent out

24:27

some resumés I should come get guidance about the extent of my recusals right because the I suppose the other

24:32

possibility is my duties could change um and so if I've sent out a resume and I'm asked to work on a specific party matter

24:38

affecting that entity right then I do have a recusal requirement absolutely um and that's a recusal requirement that I

24:44

probably need to know about exactly so you know it's it's useful to have this so that employees can continue working

24:50

on regulations but they should probably think of themselves as doing so with the

24:55

permission and guidance of the ethics office exactly no absolutely uh we do have a question that's coming through

25:00

the hangout and uh Maddie Parker asks so this includes employees engaging in outside activities self-employed like a

25:06

CPA preparing tax returns in the evening uh they're not really seeking they they are doing in some cases so I think the

25:13

question is during what part of the outside employment uh process do we look

25:20

at seeking um and it seems to me looking at the regulation that what we mean is when we're seeking those clients we have

25:26

to look at subport F right uh when we are negotiating for an arrangement with those clients uh we need to look at

25:33

subpart F with a particular eye towards section 208 right and once we've secured that employment we need to be looking at

25:40

subpart e and 208 and subpart G and all of the other authorities that we look at

25:45

when we advise employees on uh on outside employment exactly exactly um

25:52

because if you look at if you look at um 602a in the in the in the regular itself

25:59

IT addresses sort of like the outside employment while a federal employee and it says an employee is contemplating outside employment to be undertaken

26:05

concurrently with his federal employment must buy by any limitations applicable to his outside activities under g& of

26:10

this part also comply with any disqualification requirement that may be applicable under subpart D or E of this part as a result of his outside

26:16

employment activities so yes you're absolutely point right dead on Patrick which is subpart f applies when you're

26:22

seeking those or negotiating for those clients um and once you have them once

26:29

they are your clients then you are just wear in the regular the other 15 rules that we have to think about or whatever

26:35

it is exactly you know then you're in the outside activities rules if they apply and you're into uh the

26:40

impartiality Provisions so this is really just an additional consideration exact in all of our considerations when

26:46

we're doing outside activities analysis exactly excellent well thanks for your question Maddie yes okay so let's move

26:52

on to the next um slide so we just so that we we're

**John goes to Macy's over his lunch hour and asks the store manager for a job**

26:58

abundantly clear on what doesn't constitute seeking employment in the first example it's John goes to Macy's

27:04

over his lunch hour and he asks the store manager for a job application to fill out John's not seeking John's not

27:11

seeking unless until he actually submits that application he's not seeking simply because he asked for one right and I

27:16

think I think that makes sense and the next one is you know along the lines of what you had discussed

**Jane is working on a program that will create incentives for the development of alternative fuels. She has sent her resume to various companies some of which are ethanol producers.**

27:23

earlier the example you gave Patrick which is Jane is working on a program that will create incentives for the devel ment of alternative fuels so this

27:30

program is just looking at a whole different sources of alternative fuels and it's a program right it's just general program she has sent her resume

27:36

to various companies some of which are ethanol producers okay so she's just sent her resume she has just sent her

27:42

resume yeah so I think I'd be comfortable with Jane continuing to work on that program provided it didn't turn

27:48

into something more specific so for the purposes of this program see not seeking

27:53

right not yet not yet not yet so she would begin seeking and we'd have to worry about seeking if a as you

27:59

suggested suddenly now she's working on more specific matters that are not matters of general applicability that

28:05

affect some of these prospective employers or B once she hears back from

28:11

one of the people to whom she sent her resume then she is actually seeking employment would have to potentially

28:17

disqualify from from the prog from the program from the program okay next

28:22

one okay so when we're talking about seeking beginning like so we talked about what two instances where you're

**Unilateral communication about possible employment is initiated by: Employee Employer Intermediary**

28:28

not yet seeking when it comes to when you're actually seeking um if we look at 2635 603

28:36

B1 paragraphs two and three okay here's where we're talking

28:42

about seeking which is not negotiating okay so we're talking about pre-negotiation when I should have just put pre-negotiation because that's what

28:48

we're talking about seeking actually begins in its in its in its most you know incipient stages according to these

28:55

definitions at B12 little I and three little I and effectively what two little ey and

29:01

three little ey are talking about are unsolicited Communications and it says to any person

29:07

or any person's agent or intermediary regarding possible employment with that person and then if we go down to three

29:12

little ey it's if you've made a response other than rejection to an unsolicited communication from any person or any

29:18

such person's agent or intermediary regarding possible employment with that person so what I've tried to do is translate that into something that might

29:25

be a little bit more approachable which is we're talking about un atal Communications when we're talking about unsolicited Communications we're kind of talking unilateral communication so if I

29:33

send something to someone so I'm the employee I send a resume I send a letter I send an email of inquiry I'm seeking

29:40

yes okay yes okay and and conversely If an employer contacts you okay so I

29:46

receive an email Patrick are you interested or would you consider I'm seeking you're seeking unless you

29:52

decline unless you categorically reject unless you say I am not interested off yeah and the same holds true if you use

29:58

an intermediary okay okay so I say to my head hunter would you please send a letter to the following companies

30:04

because I might be interested in working with them I'm seeking yes or if the outside employer is using an

30:10

intermediate okay so I'm contacted by company X's uh Head Hunter and they say

30:16

Mr Shephard would you be interested in maybe serving as an Ethics instructor at our company and if I do anything except

30:21

to say absolutely not you're seeking I'm seeking absolutely yep okay so we're capturing

30:27

we're Capt ing employment employment uh prospects at the very beginning stages

30:32

of when you're actually looking for a job okay okay so then the next slide so

**Bilateral communication about possible employment**

30:38

when does negotiating begin now this is the pickle and this is the reason why we've created subpart F the way we have

30:44

if we look at 603 B1 one little ey this is you can get a sensibility about why

30:50

this gets tricky okay um it says engage in negotiations for employment so you're seeking if you're engaging in

30:55

negotiations for employment uh for purposes of 208 the term negotiations means discussion or

31:02

communication with another person or such person's agent or intermediary mutually conducted think that's a key

31:09

phrase there mutually conducted with a view toward reaching an agreement regarding possible employment with that person the term is not limited to

31:16

discussions of specific terms and conditions of employment in a specific position okay all right Patrick you want

31:22

to so I send the resume yeah uh to company X and I receive an email back says Patrick we would love to meet with

31:29

you uh could you come over next Thursday for a chat I'm probably negotiating you

31:34

are probably negotiating and likewise if I hear back from my head hunter who has contacted company X and they said

31:41

company would like to know if you're available next Thursday uh for a meeting I'm also probably negotiating yes

31:49

exactly so once you're into bilateral Communications with a view with a mutual

31:55

you know conducted mutually with a view towards employe you're arguably negotiating and we can

32:02

we can try to parse through a whole host of different variations on that theme and you can understand how thorny that

32:09

gets and we're dealing with the difference between a criminal or not criminal you

32:15

know liability I I guess it's sort of to go back to our swimming pool analogy if I'm running towards the pool right one

32:22

second I'm jumping the fence into the yard and the next moment I'm drowning which is why we built fence right right

32:29

right so we want that fence as far away from the pool as possible because we're not exactly sure how deep the pool or

32:36

where the pool be where the pool begin and these things progress very quickly yes they do you know in the course of a single telephone call I could I could

32:42

pick up the phone and call company X um and I said you know just in case you guys are interested in hiring an Ethics

32:48

instructor um you I'd like you to know that I might be interested and they say yes could you come out would you

32:54

consider moving to Phoenix then we're we're definitely negotiating yeah and can happen in a dozen words yes

32:59

absolutely and it and it can and does happen that fast yeah so it it makes sense that we would uh we would try and

33:05

draw this sort of bright line that once we've made a communication aimed at uh future employment we're seeking right

33:12

okay right okay so we've got a few examples here that I just want to walk people through just to kind of get you

**I've just posted my resume on several on-line resume posting sites.**

33:18

know give a a feel for like when like where those lines might be so Patrick I've just posted my resumé on several

33:24

online resume posting sites am I seeking employment I'm not sure who you would be seeking

33:29

employment with what is fundamentally missing here that would make you believe that this can't possibly be like a

33:35

disqualifying activity there's no sort of confirmed recipient of my unilateral communication right so there hasn't

33:42

really been a communication to our knowledge right um if they were to see that and and call us back or make an

33:49

inquiry I think you know then that's easy we're gonna we're going to look at that in a second but yeah here know I don't I don't I don't think there's a

33:54

there's a person with whom you could be seeking right yeah I mean you can't even identify a perspective employer unless

33:59

the universe of people who might conceivably viw your resume on one of these online resume posting sites so

34:05

posting it alone no and that wouldn't be helpful for us to say you're seeking with the entire world because and you

34:10

have to disqualify from everything because anybody might actually look at your resume yeah be a good work

34:15

avoidance strategy if that were the case Okay so I've just received an email

**I've just received an email from someone indicating interest in my resume. I do not respond.**

34:20

so I've posted my thing online and I've just received an email from someone who's indicated an interest in my resume

34:26

but I don't like them so I don't respond okay I I think you're

34:31

seeking uh there's been a unilateral communication and you've not shut it

34:39

down well I don't know I think I would argue that that you are that you aren't seeking because you've made um you know

34:45

you've you've not responded like you've you've made a a you you haven't responded you haven't

34:52

affirmed you haven't given any indication that you're you continue to want to seek employment but well that's

34:58

good so when when I when I post my my thing on uh you know sort of professional social networking sites or

35:04

whatever and I get all this spam garbage I don't have to go and say no no no no no to all of those all of those

35:10

possibilities okay yes because you haven't made a response so I think that's the whole

35:15

thing it's that you've made it's only if you've made a response other than a rejection okay is that you're actually but if You' make no response I've made

35:22

no response yes so if I said I'm gonna think about it right that's different right right excellent well that's going

35:29

to save me a lot of time I can stop responding to all those in in invitations to those direct sales

35:36

opportunities available now exactly exactly

35:41

great okay so now I'm going to use a head hunter or I am using a Head Hunter and they just call or she just called me

35:48

and she said hey you've got two prospective employers that are looking at your as a mayor okay wait a think she hasn't told me who they are

35:55

that's right I don't think I'm seeking in this case I I would agree with you I think that I don't know who I'm seeking

36:02

with you don't know who you're seeking with and again that's the we have to always remember in the case of subpart f we are focused

36:08

on on preventing employees from working on matters in with in which a prospective employer has a financial

36:14

interest if you have absolutely no idea who the prospective employer is there is no risk of you having a conflict of

36:20

interest because you couldn't you can't yeah who who am I supposed to recuse from exactly exactly so unless or until

36:28

your head hunter tells you who these people are um you you just if they just

36:33

generally say two people are looking at your resume that is not going to be sufficient to trigger seeking employment

36:40

great okay I just sent my resume to one of our agencies grantees presumably I

**I just sent my resume to one of our agency's grantees.**

36:45

know which one yes yeah I I think I'm I'm probably seeking yeah you are

36:51

probably seeking or I am probably seeking because um and this is one of those situations too where I mean if an

36:57

employee came to you and said I just sent a resume to one of our grantees I mean this again is going to get to our

37:03

role as ethics officials which is to say okay our concern is do you have any matters that you're working on that could affect them right and then once

37:09

you know that then you can discern discern whether or not the employee currently has a disqualification requirement or if or if it's one of

37:15

those situations where they're only working on matters of general applicability and so they're not yet seeking employment but I would argue if

37:22

if chances are that this employee is probably seeking um since it's targeted

37:28

to a specific grantee and actually that's uh sort of a question going back to our last slide which is even if your

37:33

head hunter told you how is it different from sending your resume which would not be a trigger so I think uh the question

37:40

is going back to the using the Head Hunter tells you that two folks are interested so it would be the case if

37:46

they told us which companies were interested we would be seeking with those two companies right we are just um

37:52

not seeking as long as we don't know their identities right can we go back to that one because I want to clarify see if I can send this back

37:59

one maybe that might be might be too too large a technical challenge okay well

38:05

okay then we just yeah here we go yeah so okay so if you're using a Head Hunter and that and you and they've told you

**I'm using a headhunter and she just called to tell me 2 prospective employers are looking at my resume.**

38:11

that there are two prospective employers that are looking at your resume I mean in every single instance when all you've

38:16

done is dispatch a resume that that thing I told you about not seeking if you're working on a matter of general

38:22

applicability and they can only be affected as a matter of class that's going to that will apply here if that's the case if if you're if if I'm only

38:29

working on a matter of General applicability then the fact that that I know who's looking at my resume it's

38:35

lesser until I get a communication from them I'm you know right you know I I may not be seeking but as an Ethics official

38:42

again you have but you have to to to let people know that when they might be G

38:48

engaging in an activity where they need to come to you so that you can decide whether or not they have a disqualification requirement right so

38:55

that's why I want to be really careful that's why I I I I I wanted to spend a little bit of time talking about when

39:01

you're not seeking with respect to those résumés in connection with matters of General applicability that's for you the

39:07

ethics official to kind of know well the way I think about it is that that

39:13

exception provides the scope of the recusal requirement exactly at the time I send a resume to a company I do have a

39:20

recusal requirement with respect to them I cannot participate in any particular matters involving specific parties that

39:25

would affect their financial or that outside employer and in the case that I'm

39:31

working on particular matters of General applicability those are just excluded from that extent recusal requirement

39:37

right so that changes what the ethics official tells me about the scope of my recusal right but it doesn't mean that I

39:46

don't have a recusal requirement or that I'm not seeking for some purposes well I think and OG is trying to sort of like

39:53

clarify this I think in our proposed changes to subpart F and what OG and what I understand OG is doing what what

39:59

we're doing in sub in the revisions to subpart F is rather than say oh in those

40:04

circumstances where you're working on a matter of general applicability and you send it to one of the people who's affected by that matter you're not

40:10

seeking employment we are instead saying yes you're seeking employment anytime you send an unsolicited resume to

40:16

someone with the view towards employment you are seeking employment what's affected what what what what the matters

40:22

you're working on will affect is whether or not you immediately have to disqualify so it's trying to switch the

40:27

focus from saying it's not seeking to just saying it is seeking but it's a seeking situation where you don't

40:33

immediately have to disqualify that makes sense and to get back to Enrique's question uh if your head hunter in this

40:38

case said that company X and Company y are contemplating your resume you would be seeking with company X and Company Y

40:45

in this case because it because now we know their identities um but in the in the case

40:52

here where we just know that two prospective employers who could be anyone in the in the world right we don't have a recusal requirement because

40:58

we don't know the identities of the prospective employers yet exactly so yeah in Ra's question is is a good one thanks for helping us clarify that okay

41:06

so we can go down to I think it's like five there okay A friend of mine just called and asked me to send him my

**A friend of mine just called and asked me to send him my resume for a job opening at his office.**

41:12

resume for a job opening at his office unsolicited

41:17

communication uh think GNA have to do something here I I guess it depends what I

41:23

said uh so if I said go away friend I don't want to work with you never in a million years not seeking if I said uh

41:31

let me pull it together and have someone proof read it real fast I think I'm probably seeking then yeah I think

41:36

you're I think absolutely I think that you know once once once you're you've had someone explicitly ask you to send

41:42

their resume because they have a job opening that they're considering you for and you send them a resume right you're

41:49

in bilateral land and I'm not saying you're negotiating yet but I do think you're definitely seeing definitely getting close yeah yeah yeah next one

41:57

okay after our status update meeting with the private contractor one of the contractor employees asked me if I'd like to come work for them on a similar

**After our status update meeting with the private contractor, one of the contractor employees asked me if I'd like to come work for them on a similar project.**

42:04

project I think again unless I sort of respond and say absolutely not no

42:11

way anything else I think I'm seeking here and probably also moving very

42:16

quickly in the in the direction of negotiating because they're you know they're talking about specific work already exactly so you're in a situation

42:23

here it's a unilateral communication from a perspective employer about employment and unless unless I

42:31

immediately say no thank you I'm not interested or something that other makes it perfectly clear that no I truly am

42:37

declining you know any any job opportunity I am seeking employment and what's the problem with this Patrick if

42:43

I'm seeking employment in this situation well we're at a meeting with them right now so it would seem that I'm

42:51

immediately working on a particular matter that affects that contractor right so I'm going to have to find a way

42:58

if I'm I'm going to do something other than reject this outright uh recuse myself really quickly so this might be a

43:05

good learning point for employees who might find themselves in this situation because that's kind of uncomfortable so if we went back to the meeting and I'd

43:12

to let me think about it uh I could potentially VI violate subpart F or even even section 208 on on the same day and

43:19

that's exactly the point which is and then I think that we need to remind employees of that is whenever they're

43:24

approached about a job possibility particularly you know with with the prohibited source for the agency a

43:30

regulated enti a contract or a granty whatever that you know they are in a position that unless they say absolutely

43:35

not they're seeking and then they have an immediate disqualification from that matter um I think we better keep moving

43:42

here we're running out a time okay so that was just to give people a flavor of like how you make determinations about

43:48

when an employee is seeking so seeking employment ends 603 B2 one little I and

43:54

two little I talk about two circumstances which explicitly where seeking employment ends first is where

44:00

the employment is rejected by either party right so we've talked about that a bunch yeah we say no way or they say no

44:06

way right um or the employer has expressed no interest within two months of the dispatch of a resume so if if I

44:12

send a resume out and I don't hear anything for two months after that two months has expired I am no longer

44:18

considered to be seeking a but I would resume seeking if they contact me if they contact you then that then that

44:23

triggers the seeking the seeking again okay that makes sense okay in ter in terms of any remedies for a job search

44:30

of conflict of interest it's going to depend on the facts of the situation and it's going to depend on where the

44:36

employee is in the seeking employment process so the next slide please um and this really gets down to if you were

44:42

ever to want to give someone either an authorization to continue participating notwithstanding that they had a conflict

44:47

of interest with a prospective employer or in the case of if they're in negotiations if you wanted to issue them

44:52

a 208 B1 waiver um in the there's a a um

44:58

and a legal advisory that I've given you a copy of as a reference tool that you were sent a copy of and that's on the

45:03

website and I'm going to make reference to it a little bit later when we get into the stock act but it walks through

45:09

um it walks through the uh considerations for waivers or authorizations I don't want to spend a

45:15

whole lot of time on it here what I do want to say are two things one it you cannot give an authorization to someone

45:21

who is actually negotiating for employment and authorization is only going to cover a circumstance where an

45:26

employ has a conflict of interest or an appearance of a conflict by virtue of

45:31

pre-negotiation seeking employment uh a 208 waiver would be necessary once the

45:37

person began negotiating and I think OG takes sort of a jaist eye towards 2wa

45:43

waivers we think they're very difficult to meet the standard we're not saying it's impossible and it's the agency's discretion to issue waivers in in all

45:50

circumstance frankly but OG basically says you have to take in consideration not only the employees interest in the

45:56

financial interest in the perspective employment but the entire financial interest of their perspective employer is imputed to them so you have to

46:02

calculate what the financial interest to the Future the perspective employer is and we just think those two things

46:08

combined makes it really difficult at times to come to the determination that the interest in future employment is not

46:14

so substantial right to affect the Integrity of their service right and when you have a presidential appointee

46:19

in particular presidential appointe in Senate confirmed you cannot issue a 208 waiver without consulting first not only

46:26

with OG but the office of counsil to the president so that's just a practice that you that you need to be aware

46:33

of we talked a little bit about at the beginning where you can't compel someone to stop looking for um seeking

46:40

employment but if you have a situation where someone is it can be materially appared in their ability to do their job

46:47

we have a provision at 604d um where you can make a determination of substantial conflict

46:54

and what that provision essentially says is is if someone is materially impaired from doing their job you can basically

47:01

say that they're going to have to take annual leave they're going to have to be on leave without pay or you can completely reassign them um as a way a

47:08

kind of a workaround to if they have such a conflict by virtue of their seeking or negotiating that they can't

47:15

actually complete complete their job so if I'm only working on the only thing I do here at OG is work on uh a project

47:22

with company X and I decide I want a job with company X so I'm I'm seeking or negotiating so I said I'm just going to

47:27

sit in my office and and play video games all day you said that's not going to work Patrick you either have to take

47:33

annual leave or we're going to have to reassign you or you're not getting paid right exactly that makes sense um in

47:41

terms of deferring the job search again you can recommend that but you again cannot compel an employee to defer a job

47:48

search that they wish to engage in um we find that this might be an Avenue that

47:54

you want to at least discuss particularly when if if you're dealing with a high level official who happens to be responsible sort of entire agency

48:01

programs or any major program area where it would be difficult if not impossible

48:06

to or be hugely disruptive to have them recuse themselves right and again we discussed that in the in the legal

48:12

advisory um that I that I that I mentioned earlier um H it's a a 2004 I

48:19

believe uh legal advisory which I've given you a copy of um so if you if you think that that's an Avenue that you

48:24

might need to Avail yourself from again it would be something to discuss with OG right no especially if you know if you have employees who want to be able to

48:31

work and fully function till the very end of their term or their appointment right um we also have a provision which

48:38

we in the vernacular call a sour grapes provision which is in 2635

48:44

606b and this is where an agency at its discretion can actually extend a recusal

48:50

obligation or even engage in a reassignment even after negotiations

48:56

have SE East with a prospective employer so let's say that somebody's been in the in the throws and In the Heat of seeking

49:02

and negotiating for employment with someone and it falls through so I I go out to Sal uh Pao Alto to talk to

49:09

company X we have a nice weekend I think it's going really well and all of a sudden they drop the hammer and say no

49:14

way Patrick and then I come back and I want to work on the project with company X yes and I'm bad too yes I mean and

49:21

that's one of those things where I mean it's just an acknowledgement of human nature and hard feelings being what they are

49:27

um just like we don't want you working on it if you really want the job and you want to try to Curry favor with them likewise we don't want you working on it

49:34

if you have all horrible attitude about them and really might want see to do them harm so you will not allow me to

49:40

come and inflict my revenge upon them through the government contract so so agencies at their

49:45

discretion can require a continued disqualification for whatever period of time they want to specify to give the

49:51

person a chance to chill and cool out um and and that's all outlined in 606b

49:57

and how you decide which remedies you're going to use obviously it's going to depend on the employees position their level of responsibility but more

50:04

importantly on what's in the agency's best interest I mean it's really a matter of if you have other employees

50:10

who can fulfill the function you should go the recusal route you know if there are other positions that the person can hold you should consider reassignment so

50:16

it's really G to you but you always should be doing what's in the the agency's best interest okay so that's it for seeking

**STOCK Act Notifications**

50:23

and negotiating for employment in subpart F so now we' got a glom on top of that stock act notifications

50:30

awkwardly awkwardly yes okay so section 17 of the stop trading on Congressional

50:36

knowledge act um applied a negotiating

50:41

and um and uh recusal notification requirement to public filers and what I

50:50

I just want to just do a general highlight because we've given you a one-pager on the stock act we've given you a copy of the legal advisory that we

50:56

issued issued on Section 17 of the stock act so this is just kind of a broad overview to kind of like help you Orient

51:01

yourself before we get into any um any um exercises so few things section 17 of

51:08

the stock act applies both to negotiations or agreements and it's not just for

51:15

employment it's also for compensation both of which have to be post government

51:20

so if someone is simply looking to engage in an outside activity for compensation or outside employment

51:27

that's going to be concurrent with their federal employment that is not covered by section 17 of the stock act section

51:34

17 is only reaching to when there are negotiations or agreements for post government compensation or post

51:41

government employment so the employment services or the compensation services

51:46

are have to be ones that would commence after government service terminates okay okay so next one so what is compensation

51:55

compensation is something that will be given in exchange for the provision of personal services so it can be and it

52:01

can be a lot of different things it can be um any form of consideration it can be a fee it could be an honorarium it

52:08

could be a salary it could be uh royalties um including it can it can

52:14

include um forms of transportation lodging and meals um if they're being

52:19

offered in exchange for the services so basically we we focus on whether or not these things are compensatory in nature

52:26

exactly exactly so who must file basically it

52:31

talks about covered employees and a covered employee is very simply anyone who's required to file a public Financial disclosure report so it's your

52:38

public filers are the ones who are going to be required to engage in these negotiating and recusal notifications

52:44

easy threshold question if I'm advising someone are they a public filer if they are I have to worry about this so we

52:49

issued This legal advisory I've given you a copy of this and this this gives you and it's it's it's a sample of a

52:55

notification statement that you can use if you if you want to um it outlines what that notification requirement is um

53:03

you go down to the next slide please um clearly we have both the notification of

53:08

negotiating uh for employment or compensation in addition to the notification of recusal statement we

53:14

have them all on the same page the fact of the matter is they don't and we're going to talk about this in a second

53:19

they don't necessarily have to be filed at the same time so let's say that someone is engaging in a negotiation and

53:26

with three business days after they begin negotiating they have to file this this notification of negotiation for

53:33

post-government employment it may very well be that at the time that they is that they they sign this

53:39

notification they don't have a conflict of interest so they don't necessarily have to sign the recusal statement so

53:45

there's never been an instance of recusal there's never been an instance of recusal and there's no necessarily any reason to believe that there there

53:51

need to be a recusal or it could be if there is a situation where you fully suspect that there may a recusal may be

53:57

required you can issue you can sign the recusal statement at the same time because the recusal statement is

54:03

basically just saying that as long as I'm negotiating or have an agreement um

54:08

I will comply with the recusal obligations and that's all a simple statement I acknowledge I have a recusal

54:13

requirement and that makes sense and that that that exists regardless of the of the statement right okay so when do

**Negotiation-- Within 3 business days after commencement of the negotiation or agreement for future employment or compensation**

54:19

the employees have to file these with with the negotiation notification it has to be within three business days after

54:26

the commencement of the negotiation or agreement for future employment or compensation okay three business days

54:31

the recusal as I just said whenever there's a conflict or the appearance of a conflict with the non-federal entity listed in the negotiation notification

54:38

so when when that you believe there to be an appearance or an actual conflict with the entity that's being identified

54:45

in the negotiation statement then a recusal um notification has to be filed as

**When to File A public filer may elect to file the notification statement before negotiations have commenced and before an agreement of future employment or compensation is reached.**

54:50

well now OG has suggested um I know a lot of agencies are doing this and I

54:57

believe even in the revisions to subpart F which are going to contain the

55:02

implementing regulations for these Provisions so those are going to be part of the revisions to subpart f um we

55:09

suggest that the public filer may elect to file the notification statement

55:15

before negotiations actually begin um or before an agreement of future employment or compensation is reached and it's for

55:21

exactly the reasons that we just have been talking about for the last hour for sub Part F which is because then we have one right line right when you're when

55:28

you start the seeking process let's just take care of all of this we'll explain your recusal obligations with which

55:33

exist whether or not you talk to an ethics officer right and get this all taken care of exactly and and again it's for

55:39

the same reason that we don't we don't have exactly we don't have a bright line definition from what constitutes negotiating so if once employees are

55:46

actually starting to engage in some of the of the employment search activities

55:52

and Communications just file one of these negotiating forms you know and then and then you're safe now OG has

55:58

said as well that if you do it in advance of actual negotiation then you're not required to file a subsequent

56:04

form once you've actually started negotiating so it'll take care of you through negotiations and and your arang

56:11

so the middle of that phone call when you call me from company X and say you know Pastor would you be interested okay so I'm merely seeking now and in two

56:18

seconds I'm going to start maybe negotiating we don't have to parse those minutes we can just say you know you've had a communication aimed at post

56:25

government employment mhm let's file the notification let's file the notification

56:30

and similarly with the with the recusal statement um we again we say the the filer may elect to do this before they

56:38

actually have a conflict of interest or an appearance of conflict of interest so I would just argue I think it's just

56:43

makes sense that when the employee files the statement the negoti I mean the

56:48

negotiation notification just do the recusal statement at the same time because again all it's acknowledging is that the

56:54

employee recognizes that they have to abide by the law and that they will recuse themselves in the

57:00

event that they have a conflict through the appearance of a conflict which is true whether they fill the form out or not right now now some people might say

57:05

well I don't want to Le get lead people to believe that this is actually an appearance or a conflict if it isn't right and I understand those concerns

57:11

and so I'm not saying you have to and that's why we're saying you can't compel people to do this they're not you're not required to issue a recusal statement if

57:16

you don't in fact have an appearance or a conflict of interests but you may elect to uh you know sort of for

57:22

administrative efficiencies and for not spending your whole life at the ethics office exactly

57:27

um there's no filing required after negotiations have been unsuccessful or an agreement has been terminated so it's

57:34

only catching the act the act the active you know negotiation or agreement and once that's terminated you don't you

57:40

don't you're not required to file now you might want to let the ethics office know just so the ethics office knows right um but you don't have

57:47

to and with whom do you file you file with the agency ethics office with an agency ethics official now one thing I

57:54

would you know just suggest is that you're not the employee is not required and there's nothing that requires the

58:00

employee to inform the employee supervisor um but clearly if the employee has a recusal requirement

58:07

keeping that from the supervisor is probably not advisable or maybe even practicable um so I I we always

58:14

encourage people to consider um contacting their supervisors and informing their supervisors in addition

58:20

to contacting the agency ethics official excellent that was a lot that was a busy hour

58:32

so what we are leaving you with then um is we have a workbook that we've given

58:37

you we sent you the workbook and it's also posted on the max.gov site um and we've given you a a series of exercises

58:45

to work through and what we would like to ask you to do um if you can scroll down on that

58:53

Patrick and this is for Thursday is we would like you to just um take a

58:59

look at the scenario that you've been given we want you to make some determinations about whether or not you think the employee is actually seeking

59:05

employment whether they have duties that could affect the prospective employer so here we're trying to get at is there a

59:11

recusal requirement um whether or not they would be someone who would be subject to a negotiating notification so

59:18

for that piece we want to know a is this person possibly subject to it and then B do we think that they're negotiating

59:23

such that they should be filing a notification and then again the recusal notification do we think that this this

59:29

the circumstances are such that that they would be required to issue a recusal statement as well and we have I

59:35

think five five exercises I think five exercises for you all to go through do that process for each of the five yes

59:41

and then we'll be back on Thursday um to go over those exercises yes so we will

59:47

see you back here same place same time on Thursday to go over the exercise excellent well thank you for joining us

59:53

and we will see you on Thursday we hope you uh find this to be helpful and uh find it to help you can uh work through

1:00:00

the exercises uh and we do have a couple of minutes uh if there are any questions on the phone uh or the hangout uh sh i'

1:00:06

be willing to to hang around if you clarification or questions or clarification certainly at this time if

1:00:12

you'd like to ask a question please press start and one please stand by

1:00:27

it doesn't look like we have any questions on the hangout um but it is interesting I think uh as we focus on

1:00:32

the process sort of the temporal steps that employees engage in as they move

1:00:37

towards non-federal employment this stuff becomes much clearer than if we

1:00:43

kind of try and work by parsing the concepts in the regulation like it's a a regulation and a sort of set of laws

1:00:50

that are really structured to facilitate a procedure yes yes yes I agree excent

1:00:58

and I'm not showing any questions on the hangout do we have any questions on the phone we do not sir excellent well thank

1:01:05

you all for joining us and we look forward to seeing you back here uh same time on Thursday to go over the exercises thanks bye

good afternoon and welcome to part 2 of our seeking and negotiating for outside

0:05

employment massive open online course we hope you're able to watch the broadcast on Tuesday where we covered an

0:12

introductory and introduction to subpart F of the standards of conduct and also we hope that you had an opportunity to

0:18

look through the exercises and maybe give them a try so today what we'd like to do is to go through those exercises

0:25

and give you guys some opportunities to ask any questions that you might have so

0:33

Cheryl um we did receive a question from

0:38

a viewer of our previous presentation one on tuesday from tuesday i seeking

0:43

clarification on on a particular issue i think this is kind of an interesting question so the question is we

0:49

understand that if a outside company or

0:54

outside employer says to an employee of the government other they are interested in pursuing an employment relationship

1:01

and the employee issues a statement to

1:07

them other than a rejection so they say maybe let's talk about it later let me think about it let me talk to my spouse any of those things we understand that

1:14

employee to be seeking employment for purposes of subpart F yes I until such time miss those those discussions have

1:21

been completely cut off and finished right so the question is this in the

1:28

inverse so an employee submits a resume to a company okay are seeking a particular position okay and the company

1:35

responds to the employee and says well you know actually that position is closed and we filled it but we may have

1:43

something else for you let us have a look you're the kind of candidate we'd be interested in uh-huh and our

1:49

employees has nothing in response to this uh-huh is that employee at this juncture still seeking I would argue

1:57

that yes because basically you're still being considered the employee is still being considered for employment by the

2:04

prospective employer right so their resume is still active right with the prospective employer now I don't think

2:11

that that's an indefinite sort of seeking asian i think when you look it from that standpoint what are our facts on the

2:17

ground are facts on the ground are the employee center resume to this organization this organization responded

2:23

with not a categorical rejection kind of a deferment for future for future

2:29

consideration so my opinion i think that we're still contending with the two

2:35

month um you know if you haven't heard a response like a positive response or

2:41

aren't engaged in some sort of a you know a back and forth within two months of the the original date i guess like

2:47

that you had that you had issued your resume then then you really did the

2:52

seeking employment has its expire has expired until such time that you heard something back exactly and that make

2:58

sense because it could be that the company is just being a polite right um but still well there's the possibility

3:04

while your resume is in the possession of the company and is being considered for all you know I it seems to me to be

3:10

sort of analogous to that same situation where you sent it you don't really know what's going on but you understand that you might be under consideration exactly

3:17

so again I think in that situation Institute the two months tolling nice i think is still in play but i don't think

3:24

that the fact that they simply said the thing for which you may originally have sent your resume is no longer in play you know we are considering your resume

3:31

for something else i think that that's not you haven't ceased seeking employment unless of course you say well

3:37

i'm not interested in any other position thank you very much whatever but if it's this kind of is being held in abeyance

3:42

for a future determination um I think you've got the two months I'm carried that that that is in play there good

3:49

nothing that makes that makes a lot of sense and that's a great questions I think that is a thing that happens sometimes so you know one too late for

3:56

that one maybe another one that's available excellent okay so shall we jump in sugar yes exercise exercise book

4:03

and I do hope that everyone had a chance to at least look at these exercises um and and at least think about them even

4:10

if you didn't um formally go through and formulate answers to each of the questions and again these are available

4:16

on max for anyone who you know hasn't found them yet they're there on the max

4:22

page that you registered for this course on exactly so if we could go to the first question Patrick

4:27

scroll down to the first question okay so our first question is in the first scenario that we gave you was this which

4:34

is we have a government auditor whose work who's working with with an IG shop

4:40

and they are doing they're auditing work looking at the accounts of a particular contractor and while they're in the

4:46

business of engaging in doing they're auditing work at this contractors facility the head of the contractors

4:52

accounting office would have tells the employee well you know we're thinking about hiring another accountant and the

5:00

employee expresses some sort of interest with like oh wow that's great and you know and to the point where they even

5:06

asked if they might be qualified for the job okay okay so I'm curious Patrick what do you think about that in terms of

5:12

with the way that we've defined seeking employment and the kinds of activities that trigger subpart F concerns right do

5:19

you think this employee has done anything that should make us be concerned that subpart F might be in play here but I'm sort of thinking about

5:25

that the breadth of subpart F and that support F is inclusive see the definition of seeking for subpart F is

5:32

inclusive of even unilateral communications uh-huh that are aimed at securing future employment and in this

5:39

case it seems that we have however a preliminary they may be bilateral

5:45

discussions of a possible employment relationship as well as sort of a response from our employee that is other

5:51

than a rejection of the overture so it

5:56

seems to me this this looks like seeking I think so too I think we're definitely in seeking I'm with you in that without

6:04

you know more facts about exactly that the depth in it and and breadth and scope of the bilateral communication

6:11

that we might even be bordering on negotiation which would take us from a regulatory concern to a criminal concern

6:18

under 208 um but I think the for me the interesting thing here is that I'm not sure if the only facts that I had were

6:25

that the employee said you know if the employee were to have come to me and said you know this this the guy at the

6:31

at the contractor basically indicated that there might be some openings there and that that was the sum total that it

6:38

was just kind of dropping generally this old reconsider hiring people and that was like the sum total of the conversation i would say

6:44

that maybe the employees just on the cusp LC speaking um but the employee kind of boat you know just kind of

6:51

bolted straight forward into seeking and perhaps even its negotiating by pursuing

6:56

that lead right and saying oh well yeah I think I might be interested in that and do you think I'm qualified I think

7:03

scenarios like this are really effective as training tools with our employees yes because if I'm sort of an employee not

7:10

an ethics official and I'm using kind of my common sense understanding of seeking

7:16

and negotiating for employment mm-hmm this doesn't feel like either of those things in kind of the common way that we

7:23

use those words but for the purpose of the regulation I think we're comfortably within the seeking here and again you

7:29

know bordering on negotiating and that's a very dangerous place to be so I think you know using a scenario like this

7:35

could be effective as a training tool uh-huh so so we both feel very comfortable that we think were there are

7:42

employees engaged in an activity that is triggered concerns under subpart F right now clearly we're only concerned about

7:48

those kinds of communications when the employee has duties that could be affected or when the duty when the

7:55

employee has duties that can affect the financial interest of so wrong with whom they're engaged in these employment search activities yeah do we think

8:02

that's the case yes I think for me this is where the own really goes off right is that this person is on site doing

8:08

work with the contractor the prospective employer presumably they're going to go back to work yes uh and if they were to

8:15

do so they could potentially contravene subpart F or even section 208 and and

8:21

that's a scary place to be and that is the really scary place to be and that's why this one really does need to be a learning tool for you to use with any

8:28

folks who are you know directly engaging with you know with contractors or with

8:35

with folks who can be affected by the work that they're doing is because these kind of things do happen where

8:40

somebody's on site they're engaged in their official duty activities and these seeking employment things come up right

8:47

then and there right and you know by by virtue of the letter of the law I mean once you're seeking employment you're

8:53

seeking employment and if you're engage in an activity at that moment where you know that matter can affect

8:58

the interests of that person that you're having that conversation with you are technically as you said I think you know

9:04

violating potentially violating at least the regulatory provisions and you're you're well on your way to a potential

9:11

criminal violation so I employees have to understand that it's not that they

9:16

can't ever have any kind of a job search conversation with with you know

9:22

businesses that they're actually doing business with but that the result of that is that they can no longer continue

9:27

to work on that matter and that means immediately right they have to immediately stop working on that matter right so yeah that's a tricky place for

9:34

our auditor to be in and I think the other thing that we want to train on in these kinds of situations is how do you

9:40

you know it in the case this auditor wants to pursue this employment uh discussion how do they extricate

9:47

themselves sort of artfully from that work who do they tell you know what are the steps to avoid violating subpart F

9:54

or r or a toc section 208 mhm because it's one thing to know that if you

9:59

continue to work you will it's another thing to be able to sort of end that

10:04

that participation in the matter to avoid the violation exactly and this kind of gets back to sort of if any of

10:11

you were watching the annual training modules that patrick has introduced and

10:16

we've we've had several sessions about this is exactly the kind of question that would be perfect for an annual

10:22

training type of environment where you're effectively doing just that you're you're not you're not only

10:28

concerned with trying to help people identify when they're in that situation but more importantly you're you're

10:34

helping them identify how to get out of that situation safely right that's exactly right yeah another thing that I

10:40

like to sort of make clear in these cases is again you know say well who's gonna know right you know what's the

10:46

possibility of detection and that's sort of very short-sighted because the endgame here is that you end up working for the contractor right and that's the

10:53

sort of thing that tends to be noticed by colleagues former colleagues people are competing contractors are growing

10:58

for firm or whatever it's kind of a visible process so I think we see a lot of detection in areas are surrounding

11:07

people moving from the government to the private sector especially when they're working with companies to do business with their

11:12

agency so your employees really want to be well protected and to navigate these

11:18

shoals um carefully and thoughtfully so that if there are any questions after

11:24

the fact they're they're protected so moving on to the next part of the

11:29

inquiry here um we talked about how the stop trading on congressional knowledge

11:37

Act has created for public filers this notification of negotiation requirement

11:43

so what do you think about that Patrick you know whether or not our employee would have that requirement why I think

11:49

it depends we're gonna have to we have to find out more about this employee I think principally we're going to have to

11:54

figure out whether or not this is someone who completes a public financial disclosure report if they're a public

11:59

filer then they have to notify and in this case we don't know so if we were counseling would be a good thing to

12:05

either look up or asked if we knew as a training audience that these people were public filers is a good thing to make

12:11

them aware of additionally right and I think the big the bigger question here is once you know that they are you know

12:18

the question for them is going to be again the question for them is going to be at what point am i required to file

12:23

this notification of negotiation and I would argue that even on the face of the

12:29

facts that we have here since Patrick and I both think that there are enough indicia that they could be well on their

12:34

way to negotiating at this point that I would i would recommend that they that if they're going to pursue this right

12:40

that they said they file a notification statement like immediately and literally was within three days of having had this

12:47

conversation where I this contractor that they should be filing the right the notification of negotiation along with

12:52

the recusal the recusal because they clearly are going to have a recusal they're not going to be able to finish

12:57

this on it no they're not they're gonna have to recuse themselves from it and there's gonna have to be somebody else assigned Kirk okay um so MIA can we open

13:07

up the phone just to see if anybody on the phone has any questions about that particular scenario yes thank you if

13:14

you'd like to ask a question please press star and one be sure to unmute your phone and record your name clearly

13:20

against our and one with any questions one moment while we wait for the first one like to

13:26

remind folks on the Hangout that if you have any questions you can type those in the lower right hand corner of your screen and we'll be able to see them and

13:33

we'd be happy to address them we have no

13:42

question okay I'm not showing any on the Hangout looks like the first question was maybe an easy one I think it was a

13:47

fairly straight for well I think they get a little more challenging from here yeah ok so here we were with with number

13:55

two now we're dealing with a senior political appointee so I think the status the filing status of this person is a little more readily discernible yes

14:03

um they're at a large department and they received a telephone call from the

14:08

managing partner of international law firm and the managing partner says hey you would you like to come in next week

14:14

for sort of an exploratory you know Chad interview with us um and the senior

14:21

appointee says um maybe let me think about it okay what are you what do you

14:26

think about this dude do we have any kind of a seeking employment concern here yeah I think this is this is a

14:32

little bit trickier this is not quite as clear I think um but you know sort of thinking about our definition of seeking

14:37

which I is inclusive of even unilateral communications right which is sort of what this is we have we have a

14:44

prospective employer someone who may be a prospective employer who's made a communication that was maybe welcome

14:50

maybe not you know we don't really know how that the senior point he feels about this yeah but they've communicated a

14:58

preference other than I'm not interested right and I think when we look at the

15:03

definition the standard is that communication is active and you are seeking until you have said I'm not

15:10

interested right and we're not gonna go forward here so I think this is another case where the the senior point he

15:16

probably doesn't feel like he or she is a seeking mm-hmm but I think per our regulation subpart F yeah seaking yes

15:25

exactly i would agree with you because i think there was a unilateral communication clearly with a view towards perspective employment which was

15:31

coming from the prospective employer and the words maybe let me think about it and nobody's estimation you know is a

15:40

you know a declination of interest so I think that we have we definitely have at

15:46

least two seeking situation yeah um now what I'm concerned about is moreover is

15:53

what's going to happen next week rhyme and so my question to you Patrick is to

15:59

the words exploratory in any way inform your perception or your your you know

16:07

your perspective on whether or not what would happen next week if our employee attends would would take us into

16:14

interviewed into potentially into negotiation mode no I think you know that's that's an interesting question i

16:20

think the the the phrase exploratory uh is probably not helpful for appointee to

16:26

notice that he or she is seeking but for our purposes i don't think it matters feds the appointee or the firm haven't

16:36

decided exactly which position would be the best or even if it would be a good fit at all um it's certainly possible

16:42

that they could enter into negotiations without having identified a specific

16:47

position specific geographic location that the world will be taken you know

16:53

but that discussion even is part of the negotiation right right if say you know i'd like to come in but i don't want to

16:59

start as a junior partner i'll come in only as a senior partner and i want a half my equity by and that's a

17:05

negotiation right right that that is negotiating so I think you know that the idea of sort of exploratory the openness

17:13

of it isn't a prophylaxis against stumbling into negotiation I would agree

17:18

because I think when you look at the definition of negotiating and negotiation under as we define it even

17:24

in subpart F and we looked at that on Tuesday and that's one of the reasons why we've crafted so part of the way we

17:31

have is because it's very unclear when negotiation actually begins but we say it's you know a communication mutually

17:38

conducted right with a view towards you know a job you know and I think that an

17:43

exploratory conversation about a job good is a job as a Congress a

17:49

communication that is mutually conducted toward you know I mean unless he sits there Stone silent but even if he did I

17:55

mean so I think that just given the the breadth of the definition of negotiation I would submit that if this employee

18:02

does attend that does go and attend this event next week that I think that he or

18:08

she is likely negotiating at that point so so my question then to is so do we

18:16

have a recusal requirement do we think there's a just you know just quality there's requirement at this point what

18:21

we don't really know oh right we'd have to figure out you know what this appointee was in charge of whether or

18:29

not the duties of the appointee or the duties of the staff that they appointee overseas I have any nexus with the firm

18:36

that could require all sorts of things we might have to learn more about the firm and you know any clients they might

18:41

represent her work they're involved in or what kind of areas while they participate in and more about the

18:48

appointee what are the responsibilities one of their duties with the with the very senior folks it can be challenging

18:54

because they can be responsible for an awful lot of stuff exactly um so there's a potential I think here for depending

19:00

on the facts a fairly broad recusal requirement yes that could be maybe not

19:11

I it could it could really hinder their ability to perform in the role yeah I mean if it materially appears that

19:16

impairs their ability to do their job I mean you could find mean if they're having to disqualify themselves from a lot of different things this could be

19:23

you know a pretty big deal right um I think one of the things that I that I

19:28

want to remind everybody too or just make sure that we're all clear on and so that you can help your appointees and your and your employees be clear on is

19:34

that recusal requirement kicks in at the point that they're seeking so even after

19:40

just this conversation the recusal require every user requirement is it is initiated from this point forward right

19:47

so the employee your employee would need to know you have a recusal requirement from the moment that that person called

19:54

you expressing this interest in meeting with you and you did not categorically decline and so don't think that

20:01

you have until you've gone to this meeting next right before you have to consider disqualifying yourself exactly

20:08

there's no room sort of the put things to bed or reassign them or sort them out go through participation the recusal is

20:14

immediate that's right and I wanted to just sort of alert folks to this fact and and it's something that we address

20:21

explicitly in the 2004 advisory that we gave you a copy of and it's on page

20:27

three where we talk about employees need to know that their recusal obligations are unaffected by subjective factors

20:34

such as whether they just think they're testing the waters or they're not really serious about the job that in fact OG

20:42

has reported one case in which the Department of Justice proceeded against an employee under 20 under section 208

20:48

even though the employee ultimately declined the offer of employment and you

20:53

can find that in one of our prosecution surveys from back in February 12th of 2002 so this is really serious and

21:00

obviously the Department of Justice takes it very seriously to that whether or not the employee him or herself thinks that they're serious about the

21:06

pursuit of the job that's being offered if they're engaged in communications about prospective employment they and

21:13

they have duties that can that can affect the prospective employer that recusal requirement is real and it's

21:19

taken very seriously irrespective of how interested or not interested ultimately the employee is in employment with that

21:24

particular employer make sure that that uh leads in nicely to a questionnaire from Alex and he says you kind of laugh

21:31

about whether they are seeking not after a call like this does that mean you find that sometimes uh folks don't recognize

21:38

a call like this would constitute seeking and I think that's definitely something we find in training frequently

21:44

is that from a common sense understanding this I haven't even said I'm interested yet that that doesn't

21:51

seem like a big deal that might not sort of weigh heavily on on people's ideas of

21:58

you know what's permitted unto the rules so this is a place that I think is very useful to train on to sensitize people

22:04

about how little contact is required to constitute seeking so we emphasize this

22:11

again and again and try and sort of prevent present people with a spectrum of communications that comes seeking

22:18

because I think we all understand the ones we start talking about salary okay now we get it we're definitely in

22:23

negotiations we know what the jobs can it be we're trying to decide where it's going to take place and how much money I'm gonna get paid everyone kind of

22:29

understands that intuitively but when someone says to you at a party or it

22:34

gives you a call and says you know you might be a good fit over here we do you think about coming and talking to some of my colleagues that feels

22:40

categorically different for some some employees yes and I mean I do and I think it's for everybody frankly and I

22:46

think that's it's because you know we can as much as we want to in our regulation talk about you know

22:52

unilateral communications with a view towards employment and you know anything but a rejection of a unilateral

22:58

communication and indicating employment and that's all lovely and great to create these you know what is a

23:04

basically very broad definition of when an activity would fall within the ambit of what we call seeking but I think we

23:10

have to put it in to real terms that people understand because I think most people don't think about unilateral

23:15

communications in the context of jai mean they think about you know somebody called me on the phone and said hey we

23:20

think we've got an opening for you think you might be interested so we got to kind of meet people where they live and I think fully expect that most folks

23:27

aren't going to recognize these activities necessarily as being things

23:33

that are the red flag right for a disqualification requirement right I think of it as sort of the

23:39

financialization fallacy mm-hmm people think you know until the money topic comes up right nothing's happening and

23:46

that you I can understand that curry focus a lot on financial disclosure and a lot of it has to do with wealth money and investments and so conversations

23:53

that aren't about money specifically don't feel like the right kind of thing right nari we want to train on um and so

24:01

I mean I think if we're dealing with a senior political appointee it's it's probably pretty likely that they're

24:06

subject to the negotiation notification requirement so I would say yes that they would have that as a requirement the

24:12

question again becomes when should they file that you know I in oh jeez guidance

24:17

that we've issued I mean we say that an employee may elect to file these before

24:23

they are technically negotiating and that will hold them in good stead even

24:28

once they start negotiating like they don't have to refile something once negotiation to actually you know they're

24:33

engaged in negotiation and I think that that's a good public sense that's a good practice particularly in this

24:39

circumstance you know what I would recommend to an agency ethics official to tell their employees is the minute

24:46

you think you're interested in starting to talk to someone we'd really like to know about it so why don't we just have you file your notification statement

24:52

then and then we can counsel you and you're good to go you know and if I was the ethics official in this case and

24:58

this employees just receive this call and they're coming to talk to me they're probably coming to talk to me about whether they're going to go to the meeting right and I'm gonna say if

25:05

you're gonna go to the meeting that's going to be negotiating and you're gonna have to file this thing we can just do it now right if they're saying I think I

25:13

don't like the recusal requirements that would come with this i'm going to call them back when i get back to my desk and tell them I'm not doing it mm-hmm let's

25:19

find them we don't need to do anything right I think that's how I'd handle it yes I think that's perfect and of course if there are if there are matters that

25:26

that they have before them where they would require recusal they would file the recusal statement i would argue

25:31

concurrent with a negotiating statement okay all right do we have any questions

25:37

on the phone about that scenario again if you'd like to ask a question please

25:42

press star and 1 and record your name star and one with any questions I'm not

25:58

showing any questions on the high and from the phone it works very good thank you okay so let's move on to number

26:03

three okay here we have an SG e special government employee and there with the

26:09

National Science Foundation they've been approached by an NSF grant t about a

26:15

consulting contract okay okay um and the SG e has indicated there that they

26:20

generally are interested in a potential consulting contract but only after their

26:26

grant review work with the National Science Foundation is completed a tricky one it's tricky because consultant when

26:33

we look at the the language in 208 is not on that big list of people whose interests are imputed to us and that

26:41

could that could cause some confusion but I think we have to remember the breadth of our definition

26:46

of seeking which basically says if you're looking for an arrangement of

26:51

basically any remunerated personal interacting whatever those are still

26:57

those are still considered seeking for purposes subpart F so on that view the

27:04

kind of work that this person is discussing seems like the kind of work that we cover under subpart F yes

27:09

exactly because if we look at the definition if you look back at the definition of Employment and this would be one of those times where I would

27:15

encourage you again if you have any questions about whether or not this is the kind of thing that's covered is to go back and look at that definition

27:21

under of employment under 26-35 603 and it says you know it includes but is not

27:26

limited to personal services as an officer director employee agent attorney consultant contractor general partner or

27:34

trustee so I think clearly consulting work contract and you know what it

27:39

considered to be a contractor or whether you're considered be consultant don't wear the other you know you're you're hiring yourself out your personal

27:45

services out ostensibly so yeah this is covered by the second trick ender and then the fact that we've sort of

27:51

deferred this discussion also doesn't absolve us because in order to end

27:56

seeking we have to decline without condition right um and in this case

28:02

simply deferring is not a declination right so i think i think we're seeking I think we're seeking to I agree

28:08

completely I think the trickier question here is and and it may not be tricky

28:13

like I think is if your practice is always to not make any assumptions about whether or not the person has duties

28:19

that can react the prospective employer but if we just look at that you know at the language on the face of the scenario

28:26

we have here that we're talking about it's a grantee and NSF grant e that's approaching the s GE and we know the SG

28:33

evidently is involved in grant review work right so so some red flag should go

28:39

up hip very least right but do we have anything that's here that's necessarily dispositive that the person has any

28:45

recusal requirements at this point no I think you know we can you know but for other facts we could take in a sort of

28:51

an advisory or a cautionary approach and advises person that if you

28:57

know if it so happens that you're asked to review a grant or other matter involving this grantee uh-huh you can't

29:02

mm-hmm the recusal requirement exists whether we've identified it specifically

29:07

or the specific instance or not and that you're responsible but if something like

29:12

this comes up that you can't work on it or if we know that the likelihood is significant that the matter will come up

29:19

we can put in place the necessary screening arrangements and inform the necessary people to keep this person out of those matters yes now the thing that

29:26

I would I would sort of as a cautionary for for all of us is is to make sure

29:31

that I mean I think we can readily recognize if you get a grant application from this grantee then clearly that's a

29:37

matter you can't work on because clearly they're affected by that right but there are instances where you might be

29:42

disqualified from an entire grant-making review because it likes let's say you

29:50

have an instance where you have a limited pool of grant money and every grant application is competing for the

29:56

same pool of money and there were competitor and they yeah it's so then I would argue that if if if the person

30:02

that's offering them this potential consulting contract and they're seeking employment with is one of the applicants

30:09

in that pool of applicants they're disqualified from that entire pool right so sort of analogous to sort of contract

30:14

situations where we're trying to decide who's going to do the work who's gonna get the money well we don't have to be

30:20

deciding that this contractors you get the money the decision to give it to one of the group of competitors right is

30:27

sufficient to trigger this qualification requirement exactly that makes sense exactly so with with respect to the

30:33

negotiating notification what do you think about that one this one's tricky um because you know many of our SG es

30:42

are 450 filers right and 450 fighters aren't subject to the negotiation notification that's correct but some of

30:49

our SG es to file public financial scores reports that's true and if I'm

30:54

recalling our stock act guidance correctly it seems that there is no

31:00

dispensation for SGS if you file a public report you filed a Guiche negotiation notifications full stop hey

31:08

if this person is a public filer they have to file the negotiation notification now they are subject to

31:14

their assignment with their subject to the requirement if they are a public filer I think the key here and this is

31:20

what you would have to ferret out as the ethics official is the negotiation notification requirement is only

31:25

required if the employment or the compensation for personal services is

31:31

going to occur once government service has ceased right so we would have to

31:37

figure out whether or not this contracting consulting relationship would be concurrent with their sge

31:44

appointment or whether it would actually occur closer the term host their post

31:50

government service so that would be the tricky piece I think that you would just

31:55

have to sort of fair it out with your sge right and sort of figure out when

32:00

their appointment expires or you know when they would ostensibly no longer be in government service to ascertain

32:06

whether or not this particular thing would require the negotiation right notification right and we just use the best information that we have now to

32:13

make that determination you know we understands possible they could be reappointed or they could be rehired by

32:18

our by NSF in some other capacity right but what we'd be looking at this

32:24

juncture just this appear to be work that you're going to undertake after the close of your of your appointment that's correct correct okay any questions on

32:32

the phone about that one again if you'd like to ask a question please press star and 1 and record your name again star

32:40

and one with any questions

32:51

no questions from the phone oh and we don't have any on the Hangout either on

32:56

to the next one you want to read this one out Patrick sure so we have us a

33:02

retiring senior employee at the FDIC who is responsible for overseeing the

33:08

promulgation of rules regulating all the member banks and this person has mailed

33:14

an unsolicited letter to a member bank offering her services as a contract consultant once she leaves government

33:21

service so retiring senior employee at fdic sends a letter to basically a

33:28

regulated entity right right interesting it is very interesting yeah this could

33:34

this one's gonna get a little complex yes because if if we let's talk about

33:40

let's talk about whether or not this person is seeking from the standpoint of the general general sensibility about

33:48

this person has sent an unsolicited letter offering their services to

33:54

someone who clearly can be affected by her dude this is generally speaking a unilateral communication uh about future

34:02

employment if seeking yes you know at least for that time cared for the two months or whatever it is until we until

34:08

we hear back so I think as a general matter yeah we've we've hopped over that first bar but then it gets tricky right

34:15

then we have to go to work and there are slightly different standards depending on what we're doing right right so we as

34:21

we as we said on Tuesday there is this kind of odd little carve out that we

34:27

have rush basically says okay so if our senior if our senior employee here are retiring senior employee is working on

34:35

nothing but these what we call matters of general clickability I just to say the sum total of all of their duties are

34:42

simply these matters policies are a policy's and regulations that can only

34:47

affect the member banks as a group as an entire group and not especially or

34:53

specifically amongst them right so though so this employee would if this employee is in a position where they

34:59

have absolutely no matters before them that discreetly effect right this member bank or

35:07

discreetly effect this member bank then we they don't have a disqualification

35:12

requirement yet because they're because they're that we've had that carve out that says okay you're not really in

35:18

disqualification mode you're not really having to suffer the disqualification requirement of seeking if you did a

35:25

unilateral communication and it was someone who you can affect only the you

35:31

only duties you have are ones that can affect them as just part of a class or part of a group yes I think about it as

35:37

sort of a timeline that for those particular matters of general applicability if that's what you're

35:43

working on we push back the moment of seeking until you've heard back uh-huh

35:49

so during this sort of interim period between you made when we've made the communication when you hear back with

35:54

something other than a no uh-huh you're you may continue to participate in those

36:00

particular matters of general applicability right so the question we'd have to answer here is what is this

36:06

person working on exactly are they only particular matters of general applicability it's our specific party matters mm-hmm they're seeking then

36:13

there's qualify from everything right so yes that's the question so we'd have to

36:18

get more information and determine whether or not we could rely upon that sort of dispensation right uh or that

36:26

delay of the seeking right because they're only working on those particular matters of general applicability right

36:32

and i think this this gets really pretty serious for folks particularly the higher up in the chain the food chain

36:38

you go because it may very well be that a senior a senior person in this area

36:45

that the people that work under them are only working on regulatory matters but because i dint of where they are in the

36:51

food chain they actually are called upon to engage in in other government matters

36:57

that are discreetly affecting or discreetly involving right the member banks so we want to fair it through this

37:03

very very clearly and again again i want to remind folks that even if the senior

37:10

employee is only working on matters or general clickability rules and policies that affect the entire all member banks

37:16

equally that dispensation from the recusal requirement is only until they hear back

37:22

once they hear back from the member bang boom all bets are often they're now fully squarely within seeking employment

37:29

and they have a recusal requirements requirement yep so we have to kind of look at the seeking and recusal

37:35

questions at the same time here right there in this case more than many others they're sort of very intimately related

37:41

and I think most importantly here though is you know we're getting into the weeds about whether or not this person is yet

37:48

seeking and whether or not they have a disqualification requirement at the end of the day as the ethics official you're

37:53

going to want to know about this as soon as possible because if you're dealing with someone who is fully in charge of

38:00

an entire unit that regulates this right group of member banks that

38:06

disqualification is going to be pretty immense I mean the ramifications of that disqualification if and or when it is

38:13

occurs is going to be pretty significant and those are going to be things that

38:18

you know the management and the organization is going to want to write aware of because and I think it's also

38:24

helpful for the employee to know about yeah because when they understand the sort of full requirements that come with

38:30

pursuing outside in a consulting work um they may decide to put off this job

38:38

search or you know to sort of pursue another RTI think about other strategies for achieving this sort of a different

38:44

timeline so they can continue to finish their work at fdic mm-hmm um yeah and I think that makes a lot of sense mm-hmm

38:50

um so I think we can agree to then because they're a senior employee that

38:56

they're probably subject from the negotiating notification whenever and if negotiations commands mm-hmm um I

39:03

suppose we could ask them to file it now right that might be a little premature since they've really not heard back yeah

39:10

it's just out there in the ether negotiations may never arise from this set of facts read but you know that

39:17

would be something to work through practically how how best to handle that that's convenes everyone to make sure you meet the requirement and and again I

39:24

think this is a totality of the circumstances thing there too because I guess in my own mind I when you've got a

39:29

senior employee who's in charge of the regular provisions of a federal regulatory agency and you are a financial

39:36

institution whose affected by that and you have the opportunity to hire one of the senior political people or senior

39:43

senior employees in that financial institution you know I know we've got a

39:49

they haven't expressed interest yet but I would be so I would be gobsmacked if

39:55

this you know member back just totally got this person down and didn't respond to them at all so I mean I guess that's

40:01

all I'm saying is that it is that is that it's it's it's better to know sooner rather than later and even though

40:08

technically I mean the law of the one not technically the law says you know they're not required to issue this this

40:13

notification and you know they have three days from the date that they've begun negotiating to it you submit this

40:19

and they're recusal that again sooner is always better if you can encourage your

40:26

senior folks particularly to do this yeah we certainly want to be able to advise this person at this juncture and

40:32

whether we execute the negotiation notification now or in a day when they get the call back mm-hmm leanna we

40:39

should have that discussion and figure out what makes sense for our agency it's likewise for the recusal notification

40:44

right um any calls any people in the phone call who have questions on that

40:49

one again if you'd like to ask a question please press star and 1 and record your name star and one and

40:57

likewise on the Hangout you can type any questions in the lower right hand corner of your screen no questions on the phone

41:08

okay and we're not showing it in the Hangout either all right okay you want

41:13

to continue on here so we're still at the FDIC with the same employee there you can tell they're retiring there but

41:19

no concerts a frequent flyer we have here yeah so this person is also entered

41:24

discussions with a publisher about a possible contract to begin writing a textbook after she leaves government

41:30

surface oh this is interesting this is kind of interesting okay so first

41:35

question & Easy's whatever this is is it seeking mm-hmm it's an interesting

41:42

question so I think you know it's helpful to look at that expanded list of the kind of services we're talking about here and

41:48

that list is pretty expansive right yeah basically any compensated personal services right and I don't see writing a

41:57

textbook is sort of categorically different from consulting or and it's

42:03

per contract is like Raj phagosome with large hole to contractual think you're

42:08

providing personal services for which you will be compensated by the publisher this personal service has happened to be writing a book right but it's all

42:15

pursuant to contract right so the other nothing special here right this is just a kind of work right um so be I think

42:22

this is the kind of thing that you could be seeking and then it says their discussions so presumably that means

42:28

we're talking back and forth mm-hmm we only require actually unilateral

42:33

communications but looks like there's a bilateral so I think we're gonna be comfortably over the threshold seeking there yes and probably moving in the

42:41

direction of or already in the area of negotiation depending on what these conversations have looked like mm-hmm so

42:46

I think you know the the first box the answers yeah mm-hmm I agree I think you were definitely seeking potentially

42:52

negotiating and yes I this this type of an arrangement would fall within the ambit of employment for purposes of

42:57

subpart F okay um okay so the question the next question is do we think this

43:03

person has any duties that affect the prospective employer and I don't want to be too sanguine about this to say that

43:09

oh well it's FDIC and it's a book publisher what's the likelihood i mean i would let FDIC decide that whether or

43:14

not that's any kind of likelihood but the all arms aren't going off right immediately the others are the

43:19

possibilities we could buy books from them they could be who knows yes but we really want to look but this is

43:25

certainly not as an immediate of a concern as a you know seeking a negotiating with a member bank where we

43:31

know there's you know a high likelihood of Nexus exactly okay uh so is this subject to the the notification

43:37

requirement um well it looks like it's after service mm-hmm and we decided this person's probably a public filer uh-huh

43:44

and it's for personal services right so it seems that we have it probably should

43:50

file now or very very soon uh-huh the negotiation notification right now it

43:57

may very well be the won't have a recusal notification that attends to that but yes I agree i think

44:02

that it's if they're having discussions right EG back and forth yep i would

44:08

argue that yeah that this person should should have already or or if hasn't then

44:14

should be filing a negotiation notification none i think that makes a

44:19

lot of sense this is another area of the training could be helpful yes um because

44:24

it's maybe not intuitive for all employees that writing a textbook or

44:32

writing other kinds of publications constitute employment for our seeking negotiating for employment rules um yeah

44:39

that could be sort of a surprise to them so this might be a good example well i think it's also important to because

44:45

there are rules that apply if if the work is going to begin or the writing is

44:51

going to begin before they leave government service then there are other things for them to consider so this is

44:56

one of those things where yes it's subject to subpart f yes it's it's subject to the negotiation notification

45:02

requirement but it may depending upon i mean depending upon when the writing is

45:08

going to take place etc etc right there might be a whole lot of other things that are implicated here so you know we

45:14

have a book deals advisory if you're not if you're not familiar with how book deals work the outside activity on the

45:20

outside activity moves you take a look at but yeah we have a good question here so the question is do we recommend

45:26

combining advice about the disqualifications for seeking negotiating with discussions of post

45:33

employment restrictions or does it make sense to keep those conversations separate i strongly advocate that you do

45:41

them together because i think that too often folks are unfamiliar with these

45:49

seeking and negotiating recusal requirements they are they're unfamiliar with how how those things can crop up

45:58

when they're in the throes of getting ready to leave government service and

46:03

they may be more familiar with the post government restrictions and so there but they're anticipating going in and

46:09

talking to you about post government restrictions but they can get into so much trouble right before they ever come to you on

46:16

post government employment that I would train on both because I think you want them to understand that that they're

46:21

kind of they're not the restrictions aren't the same by any stretch of imagination but they kind of go hand in

46:27

hand and you don't want people waiting be you know until they come to you for post government employment to let you

46:33

know about their post government plans I think that's that's very good and I think another thing is from a customer

46:40

service perspective the scope and magnitude of the post employment restrictions can be cogent to they're

46:48

seeking process right right that could be really invaluable information for them to have I odd the degree to which

46:54

they'll be restricted for certain kinds of work in selecting a job for post government and it could be very

47:00

interesting to their prospective employers and we don't want to cause anyone any unnecessary heartburn in pain

47:06

so being as transparent about that as early as possible benefits both you and

47:11

the program and the agency as well as the employee who is is fully informed as

47:16

they conduct their job search um I died maybe suggest that ah this isn't even an

47:23

either/or right it might be on either and yes it's very good to you know sort

47:29

of explained that the scope of the post employment restrictions with the employee of the time you're our

47:34

counseling them under subpart F but also once you have more details about where

47:40

they're going and what they're doing it might be useful to check in again so you can provide them really specific advice

47:45

to whatever position they ultimately land on above that that's a great question do we have any questions on the

47:53

phone for number five again if you have any questions please press star and 1

47:58

and record your name star and one with any questions no questions from the

48:09

phone some thank you and when we're not seeing any questions any further questions on the Hangout brings us to

48:15

the last scenario our last scenario okay so we've got a FEMA employee and this

48:22

person is responsible for conference planning setting up meetings & conferences across the United States they have enough he may has an

48:30

upcoming conference in baltimore and three hotels have responded to their rfp

48:35

and those three hotels were the marriott the grand hyatt and the crown and Crown

48:40

Plaza the planner in question is deciding which of the three hotels will host the conference two weeks ago there

48:48

are planner sent her resume to every hotel in the Baltimore area including

48:54

the three that responded to the RFP but she has not heard from any of the three

48:59

yet all right from anyone yet this is a fun one it is fun uh okay so going back

49:05

to the beginning of our definition of seeking an unsolicited communication uh-huh I aimed at future employment

49:13

mm-hmm Issy yes and the only time we ever move that back is if the only

49:18

matter for working on are matters of general applicability right this person's working on a contract we're

49:24

doing an RFP we're gonna spend some money uh-huh contracts or specific party

49:30

matters right our contractor with seeking right now yes she is um does it

49:39

matter does it matter at all that she has basically blanketed the Baltimore area and Baltimore hotels with her

49:46

resume does that somehow dilute the seeking issues such that we don't worry about it as much or somehow that because

49:53

she sent them out to everyone and they're all kind of only in that doing

49:59

her job just got a whole lot harder no

50:04

it doesn't make any difference whether whether she sent it just to marriott her if she sent it to marriott and Crown

50:10

Plaza and everyone else under the Sun she's seeking with all of them right so issue isn't how many resumes did Mary Jo

50:18

send out the issue is not accept we're deciding the breath defer recusal anatomy configure with every single

50:24

resume you know the question isn't you know it did because she mask mailed her

50:29

resume does that somehow absolvo from seeking until she hears something from not at all it doesn't it absolves her

50:36

from being a conference planner in Baltimore area for the experience 56

50:41

Minnesota so the facts to look at what we're focusing on here is what was the what are the matters that she is working

50:49

on at the moment and do any of them do any of the matter she's working on

50:55

discreetly affect the you know discreetly affect anyone to whom she sent a resume and in this case

51:01

absolutely absolutely she can't do this she can't yeah so the recusal starts now

51:08

yes she can't work on this RFP she can't work on this procurement she can't work on this conference right until she ends

51:16

this seeking activity great um oriented for her yes so so what we're looking at

51:22

here is she is seeking so she has an immediate recusal requirement so the only thing that's going to change that

51:29

recusal requirement for her as patrick said is then if she hears back from from

51:36

these the mother interest and they're not interested or she hears back from them and she decides she's not

51:42

interested in she tells them i'm not interested in any further conversation that's one way that her refusal requirement goes away right but there is

51:48

a second way that her accuser requirement could go away since she's papered the entire universe with her

51:53

resume is that if if within two months of the dispatch of the resume her resume

51:59

has been out there for two weeks ok but if after two months she's heard nothing right from these three folks then the

52:07

seeking ends until such time she hear something that's right yeah that's right ok um so she might have some time on her

52:14

hands I in the next six to seven weeks Baltimore's to stuff that completely off

52:19

the off the reservation governor's be reassigned to st. Louis yeah in class for any place that although I feel ya so

52:26

she's made things difficult for us yes and then her for this piece of work um

52:31

so so we know she's recused from Baltimore matters from any of the things there for the next at least for the next

52:38

two months unless she hears back and then it goes from there and we could be getting ourselves into negotiating at that point right um what about will she

52:46

will if she gets into a situation where one of them writes back and suggests were really interested in now she is in bilateral communications and he's

52:52

negotiating does she have a negotiating notification requirement it depends um we'd have to find out if she's a public

52:59

filer mm-hmm conference planner maybe maybe not you know depends on the agency and how they structure that kind of

53:04

thing so just be a factual question you know it's this person of public filer if they are they would have to file that

53:10

once the bilateral communications commenced right this is an area where if this is a public filer I'm not sure

53:17

about doing 200 ah negotiation for every

53:23

Hotel in Baltimore um but that might also be a concern of others higher up in your organization that you have a very

53:29

senior person who's basically disqualified themselves from their job for the next six weeks they might have something to say about that right and

53:36

that is one point and then you Yuri actually reminded me of something that is one point that I want to make abundantly clear with folks is that

53:42

negotiation notification requirement if it applies you have to report your

53:47

negotiating even if you don't have any matters that could affect it so it's not like you only have to submit a

53:55

negotiation notification if you have also a recusal requirement which is to say if you you know can affect the the

54:01

person with whom you're negotiating for employment if you have if the requirement is met which is to say that

54:08

you're a public filer you're negotiating for employment and it's going to happen post government like the employment will be post coverman you have that

54:15

requirement irrespective of whether or not you have any conflict of interest or appearance of conflict of interest with the person with whom you're you are

54:21

negotiating for employment and in this case with this freedom employee we have

54:26

no indication necessarily that she's a public file or if she is she would be subject to that negotiation notification

54:31

and and again assuming that it would be for post government employment right if

54:37

it's concurrent employment then she would not have no one would have the negotiating right uh requirement no we

54:43

have a question us so I think this is an interesting amendment to our fact pattern I'll see we change the facts

54:50

just a little bit and so the employees not part of the source selection but is some of someone who will be working with

54:55

the hotel once they're selected also in requesting things of the hotel

55:00

configuring the space signing up the rooms and all what's the scope of the recusal in that

55:06

case um I mean I think that's where you

55:12

start getting into you'd have to look at what the duties and responsibilities of that person would be because if anything they're doing is is personal and

55:19

substantial participation in the contract right and I would argue they're still going to have a recusal

55:24

requirement with respect to the hotel that is selected right so she I sort of here the that's sort of a clarification

55:30

that question is you know how do we know if the thing she's participating in will

55:35

affect the financial interests of the hotel mm-hmm and that contract that that matter right that's being executed does

55:41

affect them right so her participation personally doesn't have to affect the

55:48

hotel significantly right here so she calls the AV guy and says you know you need to run over here cuz are things not working that's probably personal

55:55

substantial participation in the contract in the title overall matter so she would have to be recused from that

56:00

exactly cuz that's the the matter that will affect the financial interest of the hotel is the contract right so so

56:07

that's just that's just that the contract they have a financial interest in the contract so then the question

56:12

becomes if the employee is going to be able to participate personally and substantially in that contract right now

56:20

if they are simply going to be at the registration desk helping to set up and whatever and they will have no interface with the hotel and they will not be in a

56:26

position to as you said call a Navy which could incur additional charges or to be engaged in anything that would

56:32

reach materially to write the contract then maybe maybe maybe she wouldn't have

56:38

our accuser I think if someone had that very minor role this is a place where

56:43

especially when they're at this mere seeking place that's up or death authorization might be appropriate right

56:49

right you can say you know look as long as you're not directing their employees you're just participating on the

56:54

government side to deal with our guests or whatever in abundance of caution you could scope that out in a subpart F

57:01

authorization mm-hmm because she's merely seeking at this juncture right uh you'd have to revisit that if

57:07

negotiations up again but you know thanks Alex that's a great question

57:13

alright so are there any questions on the phone with respect to either six or any of the other any of the other

57:21

questions that are any of the other scenarios that we again if you have a

57:27

question press star in 1 and record your name again star and one with any questions one final thing we didn't

57:35

really get to touch on a whole lot today which but I really encourage you to read the advisories that we've given you

57:41

copies of particularly the 2004 advisory that we gave you on seeking employment because in that we really talked about

57:47

what should what you should consider in the event that you have a situation where recusal isn't really optimal to be

57:55

looking at maybe limited waivers or limited authorizations and but if you're if you think at all that that might be

58:02

something that you're going to have to consider be thinking about that now and be thinking about sort of like

58:08

policy-wise like what you're what you're sort of like parameters are going to be because as our GE has stated on many an

58:15

occasion including in this advisory the what we think waivers for negotiation for employment should be rare because

58:22

they we think is that the standard for a b-1 waiver which is the finance that the

58:28

employees interest is not so substantial to be deemed likely to affect the integrity of their services is a really

58:34

hard standard to reasonably argue when you're dealing with the actual salary

58:40

that's while you're dealing what you're dealing with the outside employers entire financial interest and you're also dealing with the employees interest

58:47

in prospective employment and that's a pretty personal pretty profound interest particularly for a departing employee

58:54

who you know is looking for a place to land so again it is the agency's

58:59

discretion to issue to authorize a waiver but please read these advisories and have that inform your decisions

59:06

about when it when and when it is not appropriate to consider a waiver we are drawing to the close of the hour and

59:12

we're not showing any further questions on the Hangout I'll do have any further questions on the phone no questions on

59:19

the phone okay well thank you for joining us oh thank you for having me yeah this has been a really

59:26

I think a very helpful massive open online course and this is an area that we took a look at the offerings that we

59:33

had on the YouTube channel we found that this is a gap so hopefully you find this to be both timely and helpful and also a

59:39

resource for the future we also hope you'll join us next thursday for the next presentation our transition

59:45

readiness series the registration open this morning and we'll be talking about training strategies for career senior

59:52

executive service employees who will be staying on through the transition actually think they face some kind of

59:57

unique issues during that time period and if you have an opportunity to train either in a formal way or less formal

1:00:03

way we'd like to talk about some strategies and some tools that you can use to support those folks so thank you

1:00:09

all for joining us and we hope to see you next time