good afternoon and welcome to today's part 1 of uge forum for 50 massive open

0:12

online course I'm Patrick Sheppard and I'm very pleased to be joined today by Cheryl came piasecki welcome Cheryl thanks Patrick

0:18

so this is part 1 of part 2 mm-hm so you'll explain maybe a little bit about how the how the week is going to

0:24

go sure we're going to be engaging you in a practical review exercise so today

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what we want to do is to introduce you to the review procedures or just review the review procedures with you to

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establish some expectations about how we would recommend that you approach the review and certainly things that are

0:44

expected of you if you were to be doing this as an actual review in your own agency and then we're actually going to

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introduce you to the form itself and we're going to walk through the form and we're gonna highlight a few things that we think are pertinent to the review

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that you're going to be conducting over the next two days so we're giving you basically 48 hours to to do this review

1:05

or as me at least as much of a review as you can possibly do because we obviously don't have a filer who can fill in the

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gaps for us and then on Thursday we're basically going to debrief the review

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with you we're gonna walk through the form again and we're going to discuss each of the entries any questions that

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we think you should have asked additional information that we might need what our conflicts review would be

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based on the information that we have and any remedies that we think we could at least provisionally be thinking about

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for any potential conflicts or other ethics concerns that we help you identify so it's basically a mentored

1:41

review exercise excellent and I think this is very timely it's not mastering this in February as you know we all know

1:48

that the 300,000 450s are gonna start coming in if they have not started

1:53

already so we were kind of thinking this would be a good thing for us to tackle this week i some sort of just-in-time

1:59

training to get you and any new reviewers up to speed with the process yes absolutely so we have a bit to get

2:04

through so should we dig into the slides yes we should okay so what we want to

2:09

start with are the resources you're going to need and we've provided you on the on the ieg page which if you look

2:17

on the page that your view where you're viewing this broadcast right now below the next panel down there should be

2:23

below that a list of materials that we've uploaded for you to assist you in

2:28

your review we're gonna walk through those right now one thing I wanted I want to ask you if you have not already

2:34

done so is to please download and open the OGE form 4:50 exercise for Jill

2:40

major because we are going to walk through that form later on so that is one document that I would like you to

2:45

have open on your desktop the others not necessarily so much but we do want to introduce you to them and let you know

2:51

what it is that we've provided for you so the first thing we have for you obviously is our OGE form 450 we're

2:58

gonna walk through this form later in greater detail but for right now it's important for you to recognize that

3:04

we've given you the position of deputy CIO for purposes of our review because

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we realized that this is a position that resides in most organizations even if it's not called deputy CIO every

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organization has some form of IT support typically that they are that they're dealing with in their organization so we

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want you to do this review as if this were the deputy CIO or an equivalent position in your agency so the review

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we're conducting is you were conducting it as if this was a report that you received in your agency for this

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position we've given you a worksheet this is a review worksheet that will be

3:48

the basically the guideposts for how we're gonna conduct our debrief on

3:53

Thursday you can use this if you'd like to if you don't if you have your own tools that you use your own job aids

4:00

that you use on the job please feel free to use what you would most what you would commonly use when you were doing

4:05

reviews in your own agency but the review worksheet we will be following this model which is for each and every

4:12

asset and each and at one each and every part each and every listing we will be

4:18

asking questions indicating if we need additional information what that additional information should be we will

4:25

be talking at least provisionally about a SAR substantive review do we think it presents a potential for conflict if it

4:30

does present a potential for conflict then what do we suppose might be the potential remedies for that so this is

4:36

the blueprint for the discussion we're gonna have on Thursday so even if you don't use it per se understand that this

4:43

is going to be the discussion we're gonna be having yeah and I think you know this really gets to the crux of the review process I think that the art in

4:52

the science of confidential financial disclosure review is really figuring out what that other information is you know

4:58

figuring out which are the questions that you really need to ask so yeah you know wherever you write those in your

5:03

own review process you know do that but make sure that you do be thinking about what other information do I need what

5:09

are the substantive issues here because again the purpose of this is to prevent the conflicts precisely precisely so

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actually the next slide this is another resource that we've given you and Patrick you are

5:21

responsible for curating this list so I'm gonna let you discuss what this list represents sure we've just put together

5:28

a short document here that you can use if you're new to the confidential

5:34

financial disclosure review process if you're not familiar with the conflict of interest policies just sort of get

5:40

yourself oriented so in parts 1 & 2 we just have an introduction to basically

5:45

the statutory elements of 18 USC Section 208 the third the third course in the in

5:53

the playlist covers commonly used exemptions so we have the statutory language and elements and then in 5 CFR

6:01

26 40 we also have a number of exemptions that og is promulgated

6:06

pursuant to 18 USC Section 208 B 2 and there are a handful of those that you're

6:12

gonna use again and again in the confidential financial disclosure review process so we have another session on on

6:17

that that topic we also have another session on particular matters if you are

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advising people about live matters if you are looking at a 450 in comparison to work that someone's proposing to do

6:31

determining whether that work constitutes a particular matter is an important part of that step and this course I introduces you to some

6:38

resources to help make those determinations and then we also have to two courses that deal with

6:44

impartiality so usually when we're looking at our conflicts analysis we

6:49

start with the potential for financial conflict of interest but that's not the end of the analysis we have to consider

6:54

all of the other parts of the standards of conduct including subpart G of the standards but also impartiality very

7:01

often comes up for example in the case of a former employer also we've included here two sessions on on 5 CFR 2635

7:09

subpart E the impartiality regulation so this is effectively effectively a primer on conflicts of interest and

7:16

impartiality so if you're feeling a little rusty in those areas or you'd like to just bone up on that a little bit before you start conducting your

7:22

review this is a really good resource for you and not just in the context of this review by just moving forward that

7:28

this is sort of the compendium of resources the diag has available dealing

7:34

with 208 conflicts of interest and impartiality issues now one thing I do want to let you know is that you won't

7:41

be able to access those links from this slide these are screenshots document so

7:47

it's a it's a tease so if you find that you're you're not able to to make the

7:54

links work they do not work they are not life but in the document itself I assure

7:59

you we have tested the links there and the links actually work in the document itself so the quickest ideas you can

8:04

build playlists like this using the Institute for ethics and government al training library for employees doing

8:10

other tasks so you know this is something that we put together as a primer for for for this particular

8:17

massive open online course but if you have folks who are new to gifts analysis setting up a playlist of gifts classes

8:22

that people can take over over the course of a week or over the course of a month or whatever is something you can do in your programs as well in addition

8:30

we've given you a documents a four-page document which is sort of a quick and dirty overview of the remedies and the

8:38

exemptions the regulatory 26:40 exemptions that are available for any

8:45

potential to await conflict of interests that you might identify when you're in the context of your review this is sort

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of a job aid to give you a sensibility about what each of these remedy

8:56

is and how it operates and just so that you have an easy access document because

9:03

we do want you to be thinking truly if you discover things on the form as you're doing your review to be thinking

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provisionally about what those remedies might look like and the exemptions list basically just gives you the title of

9:16

each of the exemptions it doesn't give you a full-blown DEET description of each of the exemptions but it gives you

9:21

the citation and the title and then you can look in 26:40 but it again it's an

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easier to look at a list and look at what the the possible universe of exemptions are rather than be waiting

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your way through all of 2640 trying to look at the you know the italicized titles to see if you can figure out

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which one might might be applicable and finally we would ask you to use the

9:46

confidential financial closure guy do g-form for 50 guide we did not download

9:51

a copy of that for you because that resides on og ease website and we thought it was just as easy for you to

9:58

get familiar with using it on the website or you may have it downloaded someplace on your desktop where it's

10:03

much more convenient for you to access it so but we are going to ask you to make use of the guide and today we're

10:10

going to look at the guide ourselves to remind ourselves of what the review procedures are and the review procedures

10:18

are effectively we ask you to conduct a technical review a conflict of interest

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analysis or what we would call a substantive review and then try to determine if there are any remedies what

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what we always try to emphasize in confidential financial squadrons of

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confidential financial disclosure is singularly to identify potential

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conflicts of interest and to prevent any ethics violations so it's a preventative

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tool for that purpose it is not disclosure simply for the sake of disclosure so Patrick how would how

10:57

would you help to summarize how that should inform their technical review yes I look at the technical review as being

11:04

subordinate you entirely to the conflicts analysis and the question I like to ask myself when I'm reviewing a forum is do I have

11:11

enough information either on the form or from the filer or from the filer

11:16

supervisor or from whoever else I might need information from to determine either affirmative ly that there's a

11:22

potential for conflict of interest here or to determine conclusively that there's no potential for conflict here

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so if I'm looking at an entry and I'm saying I don't know if there's a potential for conflict here I can't tell

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I can't make a decision one way or the other I know I need more information from someone so that information may be

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a complete name of a security it may be information about the kind of position

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that someone holds outside of the government it may be information about the kind of work they do in the government but if I can't make that

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determination either yes there's a possibility for conflict here or no there will not be a possibility for

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conflict I know we're not finished yet so that's kind of how I measure technical completeness without really

12:03

having to get to in the weeds about what if the regulations say has to be on there precisely so I think that for

12:11

purposes of your review of this form we would suggest to you that you view your

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technical review through the lens of your substantive review which is to say that if you look at and if you look at

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it's something that's on the form you're not quite sure what it is that becomes a priority to discover what it is so that

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you can eliminate it as a potential for conflict or another ethics concern right but likewise if you see something on the

12:36

form that you you feel like you get pretty sure you can identify it and you're pretty sure that it's a conflict but there might be some just a little

12:43

bit of additional information that technically is required to be reported if you have enough information to do your conflicts review do your conflicts

12:50

review and get that settled right and it's not absolutely imperative that it be perfectly reported it's more the

12:58

importance is that you have sufficient information to be able to do a reasonably complex analysis and I think

13:04

you know this is an area that I think there's some confusion many many years ago OGE changed the reporting

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requirements not to require the disclosure of diversify mutual funds and we did

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that because there was a lot of difficulty with agency spending lots of time to go back to get the full names of

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obviously diversified mutual funds that can never pose a conflict of interest they said that's not a good use of your

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time a good use of your time is figuring out where the conflicts are so you exactly right so to your point that if

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you have enough information to say that's not gonna be a problem then it's not gonna be a problem precisely precisely and then of course

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as we've as we've said previously we want to be able to discuss potential remedies and we have to know fully what

13:46

the thing is we're looking at in order to know what type of remedy is even going to be available to us so the

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question then sometimes people have is well when do I need to get additional information and you know how do I know

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what are some some markers for for when I should be getting additional information I mean obviously if you if

14:03

you can't identify what the thing is based on the information that's provided you're gonna have to go back and get

14:09

additional information but sometimes we see some inconsistencies between things

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that are listed on the report for example you might have something that's listed on part one that that you know

14:21

beggars some questions that that seem unanswered on part one and then you go

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to a different part of the form and you find additional information but that additional information doesn't fit

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squarely within what you're seeing in between parts so situations like that where you have inconsistency and it

14:37

makes it unclear to you exactly what the nature or the magnitude of someone's financial interest is in something that

14:42

would be something you would go back and ask for additional information if there are omissions that for example for some

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of you well I don't know how many of you are using an electronic form but I know that the electronic system that we use

14:59

offers a compare function so when you're looking at annual reports for example and if you have a compare function it's

15:05

going to do a lot of that legwork for you in terms of seeing if there was anything that was reported previously that is no longer being reported now

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those kinds of omissions are things you might want to follow up on but again really mostly mostly if you're concerned

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that it was something that was questionable or if you or if you have a material are concerned about the weather

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and the person has material we completed the report yeah and I think that's the sort of judgment call you

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have to come to as a reviewer is figuring out did the person completing this report understand what we're asking

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them for or are there indicia that they fail to understand what the information is we're looking for and if it looks

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like they just didn't understand what we were asking for so they didn't provide enough information for us to make those judgments we're gonna need to go back to

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them right but we you know we we if it appears that they understand fully what we're asking for them we can go through

15:55

our technical analysis our complex analysis and say do we have enough information to determine one way or the other but one of the things we

16:01

underscore in this document it was what Patrick Munoz mentioning earlier is that

16:06

you know you can choose not to pursue technical deficiencies if they are not

16:12

relevant for the conflict of interest analysis we state that explicitly in the review guide so if you're still feeling

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a little nervous notwithstanding what Cheryl said and notwithstanding what Patrick said on this broadcast our review guide says it as well so we do

16:24

want you to take that to heart that we you do not have to have a technically perfect report right so I would I would

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encourage you to when you have an opportunity to read this page in the review guide to satisfy yourself of when

16:37

OGE believes it is probably prudent for you to seek additional information so

16:45

for purposes of criminal conflicts of interest which are one of the primary

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things we're going to be looking for clearly 208 is one of the primary concerns that we have but it's not the

16:56

only conflict of interest statute that we're concerned by where we wanted to

17:03

give you a sensibility of where these things might show up on each of the parts of the form where might you find

17:08

information that would implicate the criminal statutes and you can see 208 is pretty much could potentially be

17:14

implicated in nearly every part of the form but I also wanted to show you that

17:20

there are other statutes that depending upon the information that's being provided by the employee could implicate

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other statutes we're not going to spend a lot of time on that right now as we're walking through the actual

17:32

exercise on Thursday we will be highlighting for you where we see potentials for other for other criminal

17:39

statutes to be implicated and we would encourage you as you're doing the review to see if there are instances where you think that

17:45

there might be possibility for another statute to be implicated but this is just to give you a sensibility of the

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need for you to have at least a basic familiarity with all of the criminal conflict of interest statutes so that

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you have the capacity to flag them when you see certain things being being

18:05

disclosed on the form absolutely and I think this is one of the other things that you will skills you will develop as

18:11

a reviewer is you know the ability to see in the forum when you need to think about which of the laws and regulations

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and if you're just starting out you know this is a very good tool to help you remember to do that and if you're a

18:24

newer reviewer who you know you don't feel you have fluency in 203 or 205 for

18:29

example you know you may have enough fluency to flag something as a potential issue that you can talk over with colleagues or a superior or the day or

18:36

your agency mm-hmm OOP there were additional ones there sorry okay similarly with the standards of conduct

18:43

we spend a lot of time talking about impartiality just like we beat the drum with 208 we beat the drum with

18:48

impartiality and partiality is very important that without question impartiality is very important but it is

18:54

not the only part of the standards of conduct that we have to be concerned by so outside activities are a big part of

19:01

the of the stuff that we see on on OGE form 450 between the outside positions

19:07

it could be see outside businesses outside earned income and outside activities are complicated ethics issues

19:14

and they involve many more things than just 18 USC Section 208 they can involve virtually or very nearly nearly every

19:22

criminal statute and every standard of conduct so we want you to be aware of that as well I've indicated

19:29

well misuse of position is also something that kind of goes hand-in-hand with impartiality and and these may be

19:35

counseling things you know these may not be things where you have to immediately jump on it and find some sort of remedy

19:41

or or require a person to resign or anything like that but but they are counseling moments their education and

19:47

training moments and you should really use these forms as a vehicle for that no and I think our

19:52

review can often cause us to engage in different kinds of ethics counseling you

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know for example if we see an outside position that's new that we never looked at your agency may have a prior approval

20:04

requirement they need to initiate for that employee to go through the prior approval and counseling process

20:10

alternatively you may have already provided that so it may be useful to have any advice that you've provided to

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the employee already available or if you see a position that you don't remember from last year to go look and see if they saw prior approval because some of

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this work may have already been done for you and you just need to verify that it was done exactly seeking employment that

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implicates actually that's that's implicates 208 gifts certainly for the

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four part 5 but we've included prohibited holdings restrictions on part 1 - and we'll keep

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coming back to this as we're going through our review on Thursday but many of you have agency supplemental

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regulations and and many of you have prohibited holdings restrictions as part

20:52

of those supplemental regulations so it's important for you to know that if that's the case and then you're gonna

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have to be able to flag obviously anything on the report that would seem to implicate your own your own regulations absolutely okay we're gonna

21:10

keep moving here ok so we said 208 is kind of the queen of the parade and so

21:16

we wanted to spend a little bit of time talking about when we're doing a 208 analysis we're doing a 208 conflict

21:21

analysis and we're trying to spot issues spot a potential for conflict what are we looking at so we have to focus on the

21:29

duties of the position it has it's imperative that when you are doing your review you start with having some basic

21:34

understanding of what you think the work is that the employee is likely going to be assigned and then once you have that

21:41

in your head and that's kind of your prime your primed for that your prime that everything I'm looking at I'm looking at through the lens of whatever

21:47

this positioning is in our case it's going to be a deputy CIO position then

21:53

all of the interests that you look at on that form you should be asking yourself is there any way any of these things

22:00

could be involved or involved in or affected by the kind of work I'm anticipating that this

22:07

employee is going to work on and in the case of a deputy CIO the duties

22:12

obviously are a discrete set of duties are going to be IT related computer related network related cloud related

22:19

all of that kind of stuff but I don't want you to ignore holdings or assets

22:26

that you see that may not be in the IT realm but may still be related to the

22:31

mission of your agency and the work of your agency sometimes I think we forget

22:37

it's kind of a dual level conflict analysis we want to be doing yes we're concerned about the specific duties of

22:43

the position and we have to be looking at what it could this person reasonably be working on but I think we don't want

22:49

to lose sight of marking you know sort of things that we know our agency might

22:55

be involved in or entities that might be affected by the work of our agency if only to query ourselves about is there

23:01

any possibility that the IT shop could be involved in this right and I think you know that gets to the purpose of the

23:06

forum which is prevention you know so casting a wide net and being conservative in our counseling you know

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if we're talking to CIO at I don't know say at the Department of Agriculture and they have some agriculture type

23:19

interests giving them a heads up that if they're asked to work on things that involve those agriculture type interests

23:25

they should come seek counseling right because that's really what we're doing here is we're trying to provide education and counseling so people know

23:31

when they need our help or if we have discrete problems they know what they need to do now to avoid those potentials

23:37

for conflict right exactly and then of course as we mentioned before if you have prohibited holdings restrictions

23:43

you're obviously going to want to have your antenna up for anything on the form that looks like it would be it would

23:49

implicate those those prohibited Holdings restrictions common remedies are for duties if you want to try to

23:56

take care of the conflict from the duty side of things recusal is the default

24:02

remedy people should be required to disqualify and lessor until another remedy is found right and for the

24:09

interest side of things for the financial aspect of things you want to ask yourself immediately is there a

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twenty six forty exemption which is going to sort of help us eliminate a 208 conflict or is it is it

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something that could require divestiture or is it an outside position that might require a resignation okay

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as we said 208 might be the queen of the parade but she's not the only person in the parade so we would want you to be

24:35

thinking about other common ethics issues in partiality and misuse we're gonna see these come up particularly in

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the case of if someone if you're a filer has a former employer spouses non

24:47

federal employer any businesses or partnerships where the person has outside earned income those are they're

24:54

gonna be the kind of things that raisin partiality and misuse issues absolutely you know so we're thinking about you know non-public information favoritism

25:01

mere appearances all that kind of stuff and then of course as we mentioned before outside activity prior approval

25:08

whether you have prior approval or not anything that's which is showing an outside activity again it may not be

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something you have to jump on immediately but just be aware that this is a moment for you to flag it for as a

25:19

potential counseling moment okay so in preparing for the review this is what we

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are recommending that you do it's a process we're going to ask you to follow specifically for this exercise that

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we're gonna walk you through we're gonna actually do this proof this prep for review today with you it's something

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that I suggest that you to the greatest extent possible do when you have your

25:45

own reports coming in I understand time is of the essence I understand not every

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report requires the same level of scrutiny but to the extent that you can you can follow this sort of like prep

25:57

for review you might find that it actually does save you time and notwithstanding we're doing it today so

26:03

if it's the only time you ever do it in your entire 450 review career you will have at least done it with us so we want

26:10

to start by we're going to pull up the form so get the form in front of you because we're gonna spend the next so many minutes literally walking through

26:16

each part of the form so the first thing we want you to do the first two things we want you to do is we want you to look at the filers position and we want you

26:23

to look at the filing status and the reason we want you to do that is for all the reasons we just described earlier the filers position is critical for the

26:30

complex review that's full half of the information you need to do your conflicts review in order to

26:36

identify potential duties and government matters the person may be working on the filing status is important because it's

26:42

going to it's going to give you a sense of what types of entries you should be expecting to see and potentially what

26:50

kinds of questions to ask so for our filer our filers a deputy CIO so we want

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you to be thinking now before you ever get into the form of what are the kinds of duties that a deputy CIO might have

27:02

and then we also want you to be thinking from my agency how am ia j'en C's

27:10

mission also sort of show up in the context of a deputy CIOs duties the

27:16

reporting status is a new entrant now there are a variety of ways somebody can be a new entrant

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we're gonna discover what kind of new entrant our filer is here in a minute but particularly for people who are

27:27

coming into government who are new to government when you have new entrant filers who are new to government you

27:32

want to kind of have that in your head as an expectation or as a primer for when you start looking at the report

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because this is a person who probably doesn't have any familiarity with confidential financial disclosure

27:45

doesn't have any familiarity with the ethics rules and regulations so you

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might want to be asking questions more questions about things you don't see on the report for example or you might want

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to make certain that people are fully disclosing things that even if they're

28:04

not necessarily a problem simply because there are new entrant filer and you want them to get used to what the actual

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requirements of filing are right you know we can count on a new entrant who's maybe coming into government never serve

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in government before never completed this form there's probably gonna be some back-and-forth right it's unlikely

28:22

they're gonna get the form perfect the first time you're probably gonna spend more time with your new entrant reports fixing

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things like getting underlying holdings full descriptions of previous employers full descriptions of the ongoing

28:35

benefits with former employers all that kind of stuff and it's a good time to invest that at the new entrant stage

28:41

because presumably that information will help you to advise as soon as possible on potential conflicts but it will also pay dividends

28:48

in their subsequent annual filings and the and the time is ticking and I think that's one of the biggest issues with

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new entrant filers is you have to you have to realize that they are on the job

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they are currently doing the job as you're reviewing their report and so you

29:05

want to act with alacrity to make sure that you are cut your discovering any like certainly actual conflicts of

29:12

interest but even real potential for conflict of interest specifically that are tied to their duties because they're

29:17

engaging in their duties as you're reviewing their form so you're going to want to be sort of treating that with a

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with a certain degree of timing priority as well next you want to make sure the

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form is completed and signed this is just simply a legal sufficiency thing that you just want to make sure you do so in the next part of the form you just

29:36

want to make sure that each of the boxes that's checked yes that there is there

29:41

are corresponding things listed on the parts where they say that they have they

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have things to report and likewise if they say they don't have anything to report that there's nothing on that report and then of course that they have

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signed and dated the report because they haven't really submitted it legally

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until they've planted they have signed and dated it and then we want you to do

30:05

a cursory review of parts one through four and we're going to do that right now and the reason we're gonna do that

30:10

is for the is for what we were talking about before which is you want to prioritize you want to prioritize any

30:16

really any risks that you can perceive and sort of like make a note that this is what I want to start on this is where

30:22

I'm going to start on this report note any incomplete or ambiguous information and also see whether or not the

30:29

storytelling which is the nature of the 450 from part to part to part maybe can give you a complete picture even if your

30:35

first impression is that you don't have enough information on something and then we want you to prioritize the entries

30:41

for review so we're gonna do that now we're gonna go into the report and we're going to start at part one and this is

30:47

the report that you're gonna do a review of so we're looking really quickly down over part one and what do we see we see

30:54

city of Philadelphia salary okay so that what does that say to you immediately Patrick looks like someone

31:01

had a job that's not at our agency at least sometime during the reporting period yeah so we may we may have more

31:08

questions we may have enquiries about residual benefits are ongoing arrangements as well yeah so we know

31:15

it's an employment interest and so we need to immediately recognize that that's what it looks like it's an employment interest so we know the

31:20

nature of it is employment and then we're gonna have to be working through whether or not we think salary is going to be sufficient or if we're gonna have

31:26

to go back but we also know it if you look down at the next one pepco is also

31:32

salary and pension so here we have a bit of a puzzle we've got two different employment interests both look like they

31:37

are still current right so it's probably unlikely that both of these belong to our filer one of these may or may not

31:44

belong to the spouse so we're looking at okay we so we've got two employment interest so you should be thinking in your head employment interests what all

31:50

does that mean are they sufficiently disclosed but before you want to go down that rabbit hole too far you also have

31:57

to say to yourself is city of Philadelphia as a municipality does our agency do any business with the city of

32:04

Philadelphia yeah does our deputy CIO is

32:09

it likely that our deputy CIO is gonna have any duties that are going to affect the city of Philadelphia now I can

32:15

answer that for OGE and I can tell you our debt our cio is not gonna have anything that has anything to do with

32:21

the city of philadelphia so while I am deeply interested and and deep-diving on this one a little bit more I can

32:27

probably not treat this as the top priority because because even if they've got like a retirement plan or something

32:34

you know that's that's that's the piece we would probably have to go after but the city of Philadelphia in and of

32:39

itself does not disturb me terribly likewise with Pepco Pepco isn't

32:46

something that would be something that a g' would have to worry about we see there's a salary and pension we got to get into that pension and decide what

32:52

that pension is but if you are an agency that regulates utilities I'm sure FERC

32:57

would be very concerned about having pepco show up even if it's on their CIOs forums I'm thinking with the city of

33:03

Philadelphia maybe somebody like FEMA where you do emergency response and you're dealing with me at municipalities

33:09

I don't know what the likelihood is that your CIO would be talking to the IT people at the city of Philadelphia but

33:16

it seems to me that it's within the realm of the possible so so the way that you gauge these risk wise and priority

33:23

wise obviously is going to depend on your agency and your missions for OGE I would not flag either of these

33:30

necessarily as being a high risk priority so then we get into the next

33:36

one first hand technology opportunities find what in terms of risk and and and

33:42

Nexus to duties Patrick what would you yeah this you know at least sort of facially looks like maybe this is a

33:49

challenge like I think I've put this pretty high on my priorities list if I saw this on the CIOs report because it

33:56

looks like this fund may have some overlap maybe contain companies that our

34:01

agency does IT business with you know who knows what but the the sort of basic Nexus test seems to be flashing if not

34:09

read a little bit yellow here absolutely so this is one I would flag immediately like I got to come back to this one

34:14

first VMware if you don't know what it is you're gonna have to look it up so it

34:21

would be one of those things where I happen to know what it is I'm not going to reveal what I would do with it because I want if you don't know what it

34:27

is I want you to look at point out so that one but this is just to give you a flavor of what we're gonna be doing on

34:33

Thursday we're gonna be looking at things in a certain priority order and we're going to encourage you to do the

34:38

same so let's move on because that's just our part one part two or liabilities our filer hasn't reported

34:44

anything we can talk about we're going to talk about this on Thursday how you treat that if at all so we're just

34:51

moving on part three outside position so now we're gonna look at our output side positions looking quickly CIO Executive

34:58

Council ok CIO boom right there there's some that's that would seem to be related to what he's going to be doing

35:06

to what she's gonna be doing yes and so we see it's a professional association so that gives us some kind of idea like

35:12

okay professional association so it's not like a corporation it's you know gives you a little flavor and then boom

35:18

board board member board member Wow we're probably gonna to flag this

35:23

right because there's a position that's a pretty significant position looks like they still hold it

35:29

it's cio executive council the professional associates directly related to what they're doing I'd flag this as a fairly high priority

35:36

thing to look into city of Philadelphia okay well that's answered part of our

35:41

question on part one right city of Philadelphia we know who said it but Philadelphia belongs to yes our Feiler it belongs to our filer

35:48

and thank heaven she indicated that it is no longer held so we don't have to

35:54

worry about her simultaneously dragging two holes right that's a federal and a non federal position at the same time so

36:00

that's answering that question for us so little pieces of information across the

36:05

forum can help eliminate some going back to the filer Electronic Frontier

36:10

Foundation Electronic Frontier Foundation that could be electronics you

36:16

know electronics could be I mean so I would want to know more about this so I would immediately flag that I need to

36:22

know more about that we know it's a coalition says they're volunteer member mmm point out the organization itself I

36:29

didn't want to find out more about this organization going to that the search engine provider of my choice and having

36:36

a look probably absolutely so part four we come to part four and here we go University of Maryland I will

36:44

teach a class in the spring holy Hannah that's now so this would be something

36:50

where now maybe University of Maryland isn't necessarily a problematic

36:55

institution for you I know maybe feared the Department of Education having any university appear in this context would

37:02

be something you'd want to flag but we are concerned because they're teaching a class and we don't know what it's about

37:08

we don't know when it starts we don't know you know we don't know anything not I think this is a indicative of how 450

37:15

reviews can often go you know we think of them is financial disclosure reports so we're gonna be looking at a lot of

37:20

stock and things like that and I think often we find that the financial security report is an invitation to

37:25

conduct a bunch of outside activities analyses yes you know because people have outside activities outside work

37:30

outside consulting arrangement all that kind of thing so you know here we have a few of those we're gonna have to think hard about

37:36

yeah and we have to be thinking about what information do we need what do we have and what are we gonna need and then

37:43

finally we have city of Philadelphia back again 4:57 deferred compensation plan I'll

37:48

continue to retain my interest in this plan for my former employer well that also adds another piece of information

37:54

to our puzzle we had seen that it was an employment interest on part one we saw they listed salary on part one as part

38:00

of that employment interest anybody who knows anything about employment interest knows there's typically more than just

38:06

salary that any human being gets as a result particularly if you held a high a high-level position in our organization

38:11

so this is answering at least in part it maybe not answering all of our questions but at least answering in part a

38:17

question we may have had about was it just salary that you got or were there any attendant benefits that you're

38:22

carrying over yeah and you can see the picture kind of coming together of what this person's situation is being me

38:28

looks like they used to work for the city of Philadelphia they have some ongoing stuff that's gonna carry on into government service it looks like our

38:35

filer Jill probably has a spouse who has an employment arrangement so we're starting

38:42

to see the picture and by thinking about it as a as a picture I think we can help figure out where the gaps are so here

38:48

you know what's in the retirement account might be a question yeah we might have some question some questions that arise but I think the first step is

38:55

to try and get a picture in our minds of what's really going on yeah and to and again to sort of like get a sensibility

39:02

about like where do I want to start on this because you certainly can start at the beginning on entry one of part one

39:10

but it may very well be that you get yourself bogged down into some back-and-forth with a filer or two or in

39:15

you know doing some research on it when the fire that's that you need to put out

39:21

is two it's two doors down right and that one needs to be done like now even before you continue with the rest of the

39:27

review of the form yep I think that's a good point to keep in mind as you do these is that if you see blinking red

39:35

problems or big risks take care of those right now exactly do not wait for the last little pieces of information to

39:42

clear up that you know the retirement accounts not going to be a problem before you let someone know that they should stop working on some

39:48

right so if you see a problem get in touch with a fight as soon as possible yes absolutely so our instructions for you for Thursday

39:57

are first and foremost know what you're looking at everything on that form is an

40:04

entity that actually exists in the real world and information about them can be

40:09

found and ascertained so if you don't know what it is you need to look it up

40:15

we would encourage you to to try to identify like what you think the nature of the interest is so if it's a stock

40:22

you know know that it's a stock if it's a fun to know that it's a fund if it's employment understand that it's

40:27

employment and then if you are not sure what all sorts of things should necessarily come with employment that's

40:34

where you dip into the reviewer guide the reviewer guide has an entire section that talks about different types of

40:40

interests that you might see disclosed on the form and it talks about how those things should be disclosed and in

40:47

talking about how those things disobedient Endon to the actual thing

40:56

you're looking at so it should give you a sensibility about if it's employment what other things should you be seeing

41:02

if it's you know if it's a business what other sorts of things might should you be seeing right and then we want you to

41:11

write down any questions that you have things that you're unclear about or uncertain about any additional

41:16

information you would need from the filer if we had a filer to actually go

41:22

back to right and then we want you with the limited information that you have to

41:28

do your best to identify whether or not you think there are any of the ethics laws or regulations that would be

41:33

implicated 2:08 and impartiality clearly but any other body of you know law

41:40

conflict of interest laws or regulations as well and truly begin to identify if I

41:48

have this kind of thing what do I need to do if it's if it's a if it's a 208 conflict or an impartial 'ti there may

41:55

be some remedies that you need to do if it's an outside position there are some remedies available but also be thinking

42:00

about is this a counseling moment if it's a counseling and what do I need to counsel them on what are the authorities that I need to

42:07

be counseling them on so that you're looking at this more as an advice and counsel document not as something that

42:14

you just do a sort of static review I and sign off as all clear because that's

42:20

really what it is it's a request from your filer for advice and counsel yeah no and I think that's a good thing to

42:26

keep in mind though the work product that comes out of this process is ethics advice it's not a form that gets signed

42:32

by three people and put in a drawer the thing we're trying to get to is employees who are advised as completely

42:39

as necessary to help them avoid the potential ethics concerns and just also sort of a plug for the review guide if

42:45

you don't take anything else away from these two sessions knowing where the shop manual is for this process yes

42:50

extremely helpful and it is indeed the shop manual for a 450 review absolutely absolutely

42:56

so my final plea to you is I know everyone is busy and we are going to be

43:02

walking through the review on Thursday but I'm going to beseech you to please take some time over your lunch today

43:09

tomorrow and make a stab or take a stab at doing the review if not the totality

43:15

of the report then just the things that you would flag as being the most concerning or the greatest risk because

43:21

you're gonna take away a lot more from the debrief we do on Thursday if you have at least made an effort to do it on

43:28

your own because you can't know what you don't know until you're actually engaged in the exercise of trying to do the

43:35

thing itself right so we encourage you to to do that and we will join you back

43:40

here on Thursday at noon and we were we look forward to spending another hour

43:48

and change with you on Thursday excellent then we'll see you next time

English (auto-generated)

good afternoon and welcome to part 2 of the review of OGE forum 450s my name is

0:39

Patrick Shepherd and I'm very pleased to be joined today by Cheryl came piasecki hi well we're back we are back just a

0:45

couple of days so what are we gonna do today well today we are we're hoping that you had an opportunity to take a

0:52

shot at the 450 exercise that we assigned to you on Tuesday and what

0:57

we're gonna do today is we're going to walk you through that review okay we're

1:03

gonna discuss each of each line of the 450 where there is an asset or some sort

1:09

of interest listed we're gonna discuss any questions we have about whether we

1:15

have sufficient information we're gonna discuss whether or not we think there are any substantive issues and respect

1:21

to that and ultimately we're going to try to familiarize you with the sort of

1:28

complexity of the analysis actually that that is involved when you have what may

1:34

on its face appear to be like not such a complicated 450 but it it actually on

1:44

Tuesday it took us you know almost 45 minutes just to look through the form the first time so we probably have a lot

1:51

to get to today so maybe we could flip over to the slides and just get started that would be great okay so here we go

2:06

all right okay now we're in the money so you should have the OGE form for 50 up

2:12

in front of you as we discussed on Tuesday the position for which we are

2:17

doing this this review is for the deputy CIO position so we want to have that in the front of our minds and primed for

2:24

that as we begin the review and we also want to keep in mind that this is a new entrant that the reporting status is a

2:29

new entrant so we want to be aware that some of the things that we're seeing may

2:35

very well be unusual in that they are things that precede persons onboarding

2:42

to government service we would like you to have in the worksheet in front of you yeah hopefully

2:48

some of you may have used this when you were doing your review we have given you

2:53

a completed worksheet on the ieg page for you if you would like to pull that

3:00

up and produce that these contain some of the talking points that we're gonna be looking at today some of the questions that we're gonna be asking

3:06

today so if you'd like to take a look at that you can but certainly we want you to be able to take notes of your own as

3:11

we're walking through the review so we're gonna start with part 1 with the

3:16

common and some common interest we typically see on part one our securities and and and these are the things we're

3:21

gonna be concerned about looking for any kind of securities or sector fund holdings that might conflict with a deputy CIO position whether there's any

3:28

current or prior non-federal employment for our filer and whether or not there's

3:34

any spousal non federal employment and related assets or income for the filer

3:40

and I'm gonna turn it over to Patrick who's going to take us through the first couple of examples on part one yeah I

3:47

know absolutely thanks Cheryl so yeah we're gonna take a look at part one and as we discussed on Tuesday one of the

3:53

things we want to be mindful of is identifying those things that appear to be most likely to protect to create

4:00

potential conflicts of interest as soon as possible we have someone who's a new entrant which means they're probably on

4:06

the job yes so they are on the job performing the duties of their position and that means that there's a potential

4:11

there's a risk that if they've disclosed things that are potential conflicts of interest we may need to take immediate

4:18

action to make sure that they don't turn into actual conflicts of interest so if

4:23

we recall back to just a few minutes ago when we were looking at the cover sheet Jill our filer is deputy CIO so

4:31

presumably that's a chief information officer someone who is involved with the

4:36

running of the IT systems and processes at our agency so anything that presents

4:42

sort of a nexus with the technology world we're gonna want to be particularly mindful of and we see here

4:49

on the first page on lines three and four that we have two such entries we

4:55

have something called the first hand technology opportunities fund and something called VMware and you know you

5:03

might not be familiar with these but just looking at them and having some familiarity with VMware myself these

5:08

stand out to me as things were gonna want to take a close look at and so at

5:15

this point we have some choices to make on the one hand we could just go back to Jill and say tell us what these things

5:22

are we think there's maybe a problem or we could do a little bit of digging ourselves we could go see what it is we

5:29

can learn about these things so that we can ask maybe some more targeted and

5:34

helpful questions and arrive at a resolution to the potential for conflict here a little more quickly so let's

5:46

start with that with our first holding the the first hand technology

5:52

opportunities fund so that has fund in the name and that's usually a pretty

5:58

good indicia that it is a mutual fund and here we have on the on the screen

6:03

for your convenience the write-up on mutual funds from the OGE 450 guide and

6:10

this guide is really important if you take nothing else away from this class except that this guide exists and that you ought to keep it on your desk when

6:16

you're reviewing these things and that it contains useful information we will have made a great contribution to the

6:22

accuracy and completeness of your reviews but this is an example of how you can use it so we can go to this entry on page 87 about mutual funds and

6:30

it gives us some information it tells us what a mutual fund is it tells us that they are created under this SEC Act of

6:38

1940 it describes how they function and it tells us about an important

6:44

distinction that we have between kinds of mutual funds and this is a distinction that matters for the application of the criminal conflict of

6:50

interest law that we find at 18 USC Section 208 and that is the distinction between sector mutual funds and

6:57

diversified mutual funds so a sector fund is a funds that has a stated policy

7:02

of concentrating its investments in any industry business single country and

7:07

other than the United States or by of a single state within the United States and this is important for two

7:14

reasons if something is a sect or fund it must be reported on the ogu form 450 and that's not an accident because they

7:21

there's also not necessarily exempt from coverage by the conflict of interest attitude we may have some de minimis

7:27

relief we can think about but there is a potential for conflict of interest with a sector fund a diversified fund so this

7:34

is a fund that does not have a stated policy of concentrating its investments in any industry business single country

7:40

other than the United States or bonds of a single state within the US are not reportable and the reason they're not

7:46

reportable is because they are exempt from coverage under 18 USC Section 2 a way to OTE has issued a regulation that

7:53

basically says if you have a financial interest in a matter as a result of owning us a diversified mutual fund you

8:00

can never have a conflict of interest which makes sense you know if we were looking at the SI the SP 500 fund it

8:06

holds 500 different companies the potential for a severe conflict there

8:11

seems very attenuated because of the diversity of the holdings of the fund however with a sector fund if we say we

8:18

had a pharmaceutical sector fund we can see how that could pose a conflict of interest you know if we had a matter involving the pharmaceutical industry

8:24

and then we also have some information here about more guidance so if you need

8:30

to make a determination about whether something is or isn't a diversified fund we have a diagram from August 2011 June

8:37

2015 so that's for your convenience so

8:42

we have a fund here and we need to find out whether it is a sector fund or a

8:47

diversified mutual fund because it's reported it seems the filer may have thought that it was a sector fund and

8:54

here we see from the definitions on the OG form 450 the definitions because it helps our fathers to determine whether

9:00

or not something needs to be reported we also have the citations for the various definitions in in 5 CFR 26 40 so let's

9:09

take a look at the first hand technology Opportunity Fund and see if we can determine whether or not it is a sec

9:16

door or diversified fund and I'll let you in on a little secret and that's the technology funds can be especially

9:23

sticky wicket the name isn't always super informative or sort of dispositive we have to do the

9:29

work that the Reg requires us to do and go look at the stated policy and we might find that in a number of places we

9:36

could find it in the Prospectus we could find it in the investment strategy section on on a financial services

9:42

website we could find it on the website for the fund but we're gonna need to go look and find out what is it they say they're trying to do here so we've done

9:49

some of that so we have the first hand technology opportunity fund strategies and statistics and it has some

9:56

information for us it says the fund invests primarily in equity securities of high technology companies in the

10:03

industries and markets that we believe hold the most growth potential within

10:08

the tech sector so it's kind of interesting well I think it's interesting some of the language here

10:14

that if we parse this out where we I think you can get tripped up on some

10:20

language that's not really material to your determination the fact that they mentioned the technology sector might

10:28

lead you down a rabbit hole of well they're calling it a sector right find

10:33

or they're there by comp by making a reference to technology sector that

10:39

that's sufficient to determine whether or not this particular fund is a sector fund right and when we go back to our definition of

10:46

a sector fund we say that has a stated policy of investing in a single industry

10:52

or in one country outside of the United States so that's a bright line and here

11:00

we're saying industries and markets so plural and I think when we think about

11:06

technology you know we can think of you know there are a lot of companies that use technology virtually all of them do

11:13

right you know we have we have biotechnology we have information technology I think each of those on

11:19

their own may be sectors they may be industries you know biotechnology or information technology but here we have

11:25

multiple industries so we could keep looking and look at some of the holdings

11:31

to get a sense of how they're implementing this guidance so here we see the 25% software in

11:38

networking consumer electronics semiconductors education social networking renewable energy so this

11:45

seemed to span multiple industries renewable in energy is a separate

11:51

industry from the internet which is separate from consumer electronics which is separate from semiconductors and education so it looks like even though

11:58

this is the technology opportunity fund we might actually have a diversified mutual fund here absolutely and I think

12:05

don't be don't be confused by the fact that this this fund does invest in

12:11

software and it does invest in Internet and network type of things but it's not

12:17

concentrating its investments in that particular sort of aspect of like that

12:23

it like as a single industry right it is it is investing in that yes right but

12:29

also in a host of other industries that are utilizing technology and industries

12:34

that are not likely to have any Nexus to our information technology folks in our

12:41

agencies right so if we had a fund that said it focused in one of these industries they said we focus in

12:47

consumer electronics we would have a sector fund and we would have to consider it under under the available

12:52

exemptions for sector funds but because we have more than one we have a plural a fair number of industries represented

12:59

here and most importantly when we go look at their stated investment policy they say that's what they're doing

13:05

that's exactly they're looking for opportunities in the market generally that are enhanced by technology which is

13:12

different than saying we invest in manufacturers of consumer electronics or we invest in software companies and

13:19

that's precisely the reason we gave you a copy of the prospectus because we want you to get in the habit of actually

13:25

looking for the strategy the stated strategy of the fund in question because

13:31

often times that will be the clue or the the singular sort of resource where you

13:38

can look and and you can see that that the strategy itself indicates this is

13:43

not a single industry this is not a single country type of fund

13:49

and we that's where you're supposed to go because what because what the definition says they have a stated

13:55

policy well the stated policy means the strategy so you really need to go there to make that determination yep and I

14:03

think this is I we didn't pick this one by accident this is a closed case this is one where you really need to dig

14:09

fairly deeply to figure out the the the solution and this is an area where

14:14

consulting one or more of those opinions referenced in the guide may be helpful to you because both of them provide

14:20

specific guidance about making this determination so while we were worried

14:25

just a minute ago it turns out we seem to have a diversified mutual funds so

14:30

it's one probably not reportable but thanks to the filer for disclosing it and giving us an opportunity to analyze

14:37

it and it's going to qualify for an exemption in twenty six forty which of course were the exemptions to 18 USC

14:43

Section 208 and again if that doesn't mean anything to you if you're a brand-new reviewer I would direct your

14:49

attention to the playlist for conflicts of interest that's in the materials that has a few hours worth of discussion

14:55

about that law and the exemptions all right so feeling a little better now as

15:03

the other one is a causing us a little bit more of a concern side I'm not sure

15:09

if you know what VMware is but we're about to go find out and what we're gonna do here is we we don't have

15:15

information about this they didn't give us a ticker symbol the filer didn't tell us if it's a salary or pension or a

15:22

receivable or whatever it could be lots of things it just says VMware so we're

15:28

gonna assume that this is a stock holding and the reason we're gonna do

15:33

that is because a stock holding creates sort of the most fulsome of potentialities for conflict of interest

15:39

it creates what we call a full 208 so if you have an employee hold stock thought

15:45

that doesn't qualify for a regulatory exemption we treat that as if the employee owns the whole company as an

15:50

individual so any matters that affect the company they'd be prohibited from participating in so because that's the

15:56

most expansive recusal standard we're gonna make the assumption that that is

16:01

so so we're going back to the guide which

16:07

is a good habit to get in because it contains lots of good information for us so this describes what stock is it

16:14

basically represents a share of ownership and a corporation and it entitles the holder to a claim on

16:20

corporate assets and earnings basically it means you own it so if you have stock in a company it means you own the

16:26

company there are different kinds of stock for our purposes stocks kind of stock so the the ownership interest is

16:34

what we're really concerned about and then we have some information about how to report it and of course you know if

16:39

our if our employees are very nice to us they include to the ticker symbol sometimes they are sometimes they aren't

16:45

the nice thing now is we have the internet so we can go find out what the ticker symbol is and do our research fairly readily which is what we're gonna

16:52

do right now so let's go take a look at VMware so here we are on VMware as

17:00

website which seems like a sensible place to start and we have some

17:05

information it's that they're they're a virtual machine company they make software products that allow for remote

17:13

computing that are used in a lot of workplaces and a lot of government workplaces and that's important because

17:20

our our filer Jill is the deputy CIO so VMware may be a current vendor at our

17:27

agency we may be currently using them to provide Network solutions for our employees they may be seeking to do

17:35

business with our organization they may want to replace whoever it is we're using right now so this is a little bit

17:41

worrying for a deputy CIO so there's

17:47

definitely a nexus between VMware which is a publicly traded company we could go onto the search engine of our choice and

17:55

look it up and find the share price but we have it we have a company that works in the enterprise IT space that is a

18:02

stock holding probably of our deputy CIO so we're gonna have to ask some

18:07

questions here and those questions are going to be how much stock does our

18:14

filer have because if jill has more than $15,000 of stock we have a real problem we're gonna need to do

18:19

something either keep pearl all the way out of VMware or ask her to sell the stock so that it's going to be something

18:25

we're gonna need to know we're gonna want to find out is it currently related to her duties do we have current matters

18:30

pending with VMware and if we do we need to take action pronto to make sure that's resolved and then we

18:38

can look at whether an exemption might apply in the case of your deputy CIO and VMware especially if they're a current

18:45

vendor I think I would think really hard about asking this person to divest to just get rid of the stock holdings so

18:51

that we know we don't have to monitor it we don't have to worry about if it creeps over the threshold we don't have to worry about a sort of an intersecting

18:59

problem with procurement laws we can just take care of it very cleanly and say you know you're not gonna hold

19:04

vmware while you're at the deputy CIO especially if their current vendor or if there's someone who regularly seeks business with our agency so this is a

19:11

place where I think we want to pick up the phone today right we want to talk to Jill but right now exactly and I think

19:17

that this is the reason we talked about trying to do a priority and your pre review try to do a priority list of

19:25

things to take care of and to look into so you can identify things that are of immediate concern and of the greatest

19:31

risk and not wait until you've completed the entire review of your report of the report to go back to the filer on things

19:38

that should be you should be acting on with alacrity so VMware is one that we know we need to

19:44

we need to jump on and we need to jump on it quickly absolutely okay so so patrick has talked

19:50

about the things that I think are perhaps most familiar to us these are you know mutual funds and stock holdings

19:58

that we that might be common things that we see on 450s but they also I think are

20:03

a fairly straightforward of 2:08 analysis that you do for both mutual

20:08

funds and for publicly traded securities so now we're going to move into the two

20:15

other assets that we have listed here or Holdings that we have listed here which are Pepco salary and pension and city of

20:23

Philadelphia salary now reviewing this from the standpoint of the office of

20:28

government Thanks I can I feel fairly safe and saying none neither of these gives me

20:33

tremendous heartburn from the standpoint of Pepco it's not something that I would

20:39

anticipate our CIO would be in any way involved with or be able to in any way affect similarly with the city of

20:46

Philadelphia what I would I do want to be careful about though are other types

20:52

of employment interests that may involve financial interests that are not just

20:58

Pepco but that might be IT related for example so whenever you have an

21:04

employment interest and this is going to apply to both our analysis of Pepco and our analysis of the city of Philadelphia

21:10

you have to be thinking about the entire universe of interests that are

21:17

associated with employment so while they've listed salary and pension here

21:23

which are most typically things we're gonna see with an employment interest we might want to particularly in the case

21:30

of our spousal employment which we're and we're assuming that pepco is the

21:36

spouses employer because as we saw on Tuesday when we looked at the remainder of the form it appears that the city of

21:43

Philadelphia was listed as an outside position for our filer which is no longer held so our assumption is that

21:49

the city of Philadelphia is referencing a former employer of our filer it stands

21:54

to reason that Pepco then is the spouse's employer okay so because that's

22:00

a live employment arrangement and we don't know anything about that employment arrangement we would want to

22:05

find out potentially what position the employee that the employees spouse held in the company because sometimes

22:12

high-ranking officials particularly in corporate settings are entitled to

22:18

benefits such as profit sharing plans and think we're stock holdings that give

22:25

them a direct tie-in to the overarching health and well-being of of that

22:31

organization so that it's such that thus the spouses interest in their employment is effectively an interest in anything

22:38

that can affect that outside entity absolutely and I think especially new entrant reports we find that a lot

22:45

of new employees and their spouses are not super familiar with the total

22:51

compensation packages they receive from their employers and that you might want to ask some targeted questions about

22:57

what they might have especially if they have a sort of senior seeming position like do you have stock options do you

23:05

receive a bonus or other incentive payments based on the performance of the company do you hold different stocks and

23:13

funds in your retirement account because there's a you know I'd it's not uncommon

23:18

at all to find people say you know I never really look at that stuff I'm not sure what what all it is and for our

23:24

purposes as you point out we really need to know because the difference is make a difference yes they do and well we're

23:30

not gonna delve into because we just don't know we simply don't have information about any other interests

23:36

that the spouse might have by virtue of their employment what we do know we can start acting on right now which is they

23:42

have a salaried position with their with Pepco and they have a pension now what

23:48

we don't know is what kind of pension they have so we would want to go back to

23:54

the file or we we could go back to the filer and ask them directly but I also did a little spelunking of my on my own

24:01

again to inform myself so that I can go back up that with some better educated questions to the filer based on some

24:07

preliminary research that I did for myself and I looked online and I noticed

24:14

that they said that they had a defined contribution plan and I looked up the

24:19

Securities and Exchange Commission form 11k for this plan now this one the one I

24:26

found was for fiscal year ending July 1 2018 so it's not the most recent but I pulled it just to give you as an

24:33

illustrative example of the kinds of forms that you can find online that can give you some information about these

24:39

things in advance of going back to the filer and asking them so what this what this SEC form tells us is that the plan

24:47

is a defined contribution plan that's established by pepco Holdings gives us a

24:52

lot of other information about what the plan kids seven who is subject to the plan and

24:59

then if you and and so for our purposes since we know it's a defined contribution plan the review guide tells

25:07

us if you have a defined contribution plan what is the nature of that kind of a retirement plan as juxtaposed with a

25:14

defined benefit pension plan and a defined contribution plan is like our

25:19

TSP it's a it's a plan where employ and the employer establishes a set of funds

25:26

for the employee to contribute money and to makes typically make selections among

25:32

a variety of different types of investment vehicles these are tax deferred plans but it's the employee him

25:40

or herself has an ability typically to make choices among a variety of different investment options that's

25:47

distinguishable from a defined benefit plan a defined benefit plan is like our

25:52

first system where where the employer

25:58

promises a certain income stream to their employees upon retirement that's

26:03

based upon a separate funding mechanism that the company itself maintains for purposes of paying out those retirement

26:09

benefits so for our defined contribution plan what do we want to see on the form

26:14

we should be seeing potentially underlying holdings which is to say what

26:19

are those funds what are those investment decisions that the employee has made on their own behalf in the

26:25

context of this fund and then we'll talk

26:30

about whether in to what extent those underlying holdings are reportable because oftentimes they consist of

26:35

diversified mutual funds and if they're diversified mutual funds they don't have to be reported but we need to know we

26:42

need to know what the spouse is invested in in the context of their defined contribution plan I think that that

26:48

little bit of research you did to find out that they have a defined contribution plan allows you as a reviewer to ask much more targeted

26:55

questions it's very helpful to be able to say you know I know Pepco has a

27:00

defined contribution plan is that what you meant to report what's in it saves

27:05

us a round of questions that we might ask is we may just go back and say what kind of pen is this and they say it's a defined

27:11

contribution plan and then we have to go back and say okay now give us the underlying holding so by looking and asking the question more precisely we

27:17

can save time and get to the conclusion of the review more quickly and going back to the SEC filing if you pulled it

27:24

if you look through the SEC filing that also gives you a sensibility about the nature of the kinds of funds that the

27:31

company makes available to its employees from which they can they can make choices they have target-date funds

27:38

which are typical of retirement funds TSP has them it's you know if you're

27:44

going to retire and you know 2021 it's an investment strategy that is used

27:50

based on the date that you're planning to to to retire from from the service

27:55

actively managed funds and passively managed funds it's just giving us an

28:00

idea of the of the nature of the kinds of funds that they're offering the thing that I've marked in red here obviously

28:07

is the big ding-ding-ding and Wes for me they have a stock fund in their defined

28:13

contribution plan which is exelon Corporation stock fund and you're like oh

28:19

exelon Corporation stock fund it's it's exelon is the parent company of Pepco

28:24

there was merger I guess of exelon in Pepco so but the stock that they're off

28:30

and they're offering a stock fund which is made up of excellent corporation stock so these are useful things to know

28:37

because X align is is is a you want to

28:44

find out what X align actually does so if you look up the exelon family of companies online they'll tell you their

28:49

fortune 100 company they do everything in the energy business power generation

28:54

competitive energy sales etc so if your agency is engaged in somehow regulating

29:01

the energy business for which you know Pepco and/or exelon would be a prohibited source would be potentially a

29:08

prohibited holding would somehow you know be of concern to you it's important

29:14

to know that this is a this is something that they can have in their defined contribution plan that defined

29:20

contribution plans aren't always comprised of just sector and and firstly my

29:26

virtual funds that oftentimes the you can actually directly own stock through

29:31

a defined contribution plan or a fund that consists basically of the yeah and

29:39

I think that something to keep in mind oftentimes a defined contribution plan such as a 401 K is basically a tax

29:44

designation for an investment account yes right the the 401 K refers to the section of the tax code that allows the

29:50

deferral of capital gains while they're being held in the account and depending on who manages the defined contribution

29:56

plan you could have access to any publicly traded company in the United States or maybe in the United States and

30:03

some other markets so there's definitely potential for holdings that post conflicts of interest which is exactly

30:09

why we require the underlying holdings if they're otherwise reportable to be reported so then we may analyze them for

30:16

potential conflicts absolutely so in this instance that gives us a heads up that at the very least we know that they

30:25

are they are probably contributing to the defined contribution plan so we're

30:30

going to want to find out we can go back to the filer and say we know that this is what the defined contribution plan

30:35

kind of looks like at Pepco and so you can ask some more targeted questions about those things that you're most

30:41

concerned about whether or not the employee holds them now if it's so if

30:46

they have an investment if they've invested in the stock or the stock fund we'd want to find out what the value of

30:52

that was to ascertain whether and to what extent any of the 26:40 exemptions

30:57

might apply in this case and you know obviously this is going to be a concern

31:03

if exelon is somehow a prohibited holding or a disqualifying financial interest for your employees at your

31:11

agency or for you in this instance for your deputy CIO at your agency and we're not saying whether or not we're not

31:16

doing that analysis for you only you can do that analysis we're just highlighting for you though the analysis you would

31:22

have to bring to the table by virtue of knowing that there's a possibility that

31:27

this person is invested in stock and or a stock fund in Pepco /x align

31:36

so now we're gonna turn to the city of Philadelphia again we know this is a

31:42

former employer so by virtue of the former employment relationship we know

31:47

that our employee has at the very least a covered relationship with the city of Philadelphia again for OGIS purposes

31:55

city of Philadelphia would not be anything that we would necessarily be concerned about but your agency might

32:01

very well be concerned seeing city of Philadelphia and and wanting to counsel the employee about whether and to what

32:07

extent there might be any matters where the city of Philadelphia would be a party to to an agency matter that your

32:14

employee could be involved in what we do know again though is that the employee has a 457 plan and I happen to look up

32:23

the city of Philadelphia and it appears as though most if not all city of Philadelphia of employees also have a

32:29

defined benefit pension interest so just for purposes of completeness it's just important to know that you can ascertain

32:36

that by just simply looking on on the Internet and find out precisely what

32:41

kind of retirement benefits the city of Philadelphia provides to its to its employees so a 457 plan seems a little

32:50

daunting if you don't know what it is and then it also mentioned deferred compensation so that's sort of is new

32:57

language and terminology that can seem kind of scary at first but if you look

33:03

in the review guide the review guide is very helpful to letting you know that if you see 457 plan we are basically

33:10

talking about it's just simply a different kind of defined contribution plan and 457 plans are typically the

33:19

types of defined contribution plans you see for state and local governments there are certain ones that are for

33:26

non-government tax-exempt organizations and they're different the ones for state and local are 457 B's plans and that

33:33

looks like what we've got here for those other folks that I think they're called 457 F plans and they're slightly

33:39

different but in both instances their defined contribution plans and so what we just talked about with respect to our

33:45

Pepco defined contribution plan is going to equally apply to our 457 plan absolutely and I think

33:52

you know when you see those those four numbers plans you know again we're talking about a reference to the tax code so this is a tax advantaged

33:59

investment account basically right and so if like if you see like a 403 B as well a 403 B is another type of right

34:06

defined contribution retirement account and they just have slightly different aspects to them but that you know for

34:13

the most part you're looking at tax deferred typically tax deferred

34:19

investments yeah and for our purposes the the analysis is the same right we're just we want to know what's in it right

34:25

the tax burden on our employees is of no concern for our conflicts of interest analysis we need to know what's being

34:31

held in that right and you can find out literally you can pull this up on the internet because I found it there what

34:38

the actual choices are that city of Philadelphia employees have in their 457

34:45

plan funds and they are as you would probably expect many many just you know

34:50

sort of typical diversified you know small income you know small cap type of

34:56

funds that are diversified mutual funds that are of no concern at all and I wanted to look specifically to see if

35:03

there was any reference to any sort of stock funds that would be of the ilk of the exelon stock fund we saw in for the

35:12

pepco and you'll see here that you have small cap stocks and funds and you have

35:18

international stock funds Patrick you want to sort of explain why we're not

35:24

view these in the same way we view we viewed the exelon stock sure so we'll

35:30

touch a little bit on the international stocks so if we think back to that definition of sector mutual fund and

35:36

says they have to have a stated policy of investing in one country outside of the United States and when we look at

35:42

these they tell us it's total international stock index fund that's the world euro Pacific so that's the

35:49

Pacific Rim countries and Europe so that's more than one country International stock fund again we're

35:55

probably not going to find in there a stated policy of investing in one country we could distinguish this from say we

36:02

had the France fund and if we had the France fund we may have a sector fund that

36:08

would be both reportable and we would have to analyze for conflicts of interest as the deputy CIO I don't see a

36:14

whole lot of possibility for that but you know if your situation were different so you're at the State Department or USAID or some

36:20

international organization I don't know there might be a possibility there well I think that the point that we're trying to make here and maybe it's obvious but

36:27

even if it's obvious I'm gonna state it anyway is that this is the reason why you need to have some familiarity with

36:35

the duties of the position for which you are reviewing this form right because

36:41

you can have the self same group of assets and holdings listed on two

36:49

different reports and for one for one position for which the filing is taking

36:55

place none of the things that you're seeing on the report would even remotely be of concern right and and you need not

37:01

trouble yourself necessarily but you know maybe even going into a lot of the details of or drilling down into it as

37:09

far as as you would if for another position where there are definitely some there's a nexus between the duties or

37:16

potential nexus between the duties and the stuff that you're seeing that they're invested in so it's just really

37:22

critical that you and that you understand that's why we're going into detail even though we know that these things would likely not be a conflict

37:29

for our deputy CIO it's important for you to understand why they would be

37:34

material or might be material if you were reviewing this under the guise of a different position absolutely so we

37:44

think that the 457 plan holdings are likely going to be diversified funds based on what we looked at on on the

37:50

website right and if they are diversified funds then they're not reportable you don't have to report the

37:57

plan even you don't you you just you don't have to report it and the 26:40

38:05

exemptions would apply to the diversified funds as well and I think this is somewhere just out of an

38:10

abundance of caution I might go back to the filer on a new entrant report the first time just to confirm and that you

38:15

know if we're going back anyway on the VMware I looked at your 457 plan it looks like all of the

38:21

holdings are diversified can you confirm that you don't have that if you have a

38:26

457 everything is diversified because at least then we're all on the same page and also it's gonna save me work next

38:32

year because I can put that in the notes and we're good to go yeah and I wouldn't suggest for one minute that you don't go

38:37

back and ask the filer for what the exact holdings are and that's not what I was no no not at all I'm just saying

38:43

that I think that we can feel you know maybe not quite the sense of urgency that we felt with you know exelon right

38:50

from the standpoint or with vmware from the standpoint that it appears as though

38:57

the choices that they had to make i'm among the choices that they had in the 457 it looked like everything's pretty

39:04

safe yeah it was pretty sick pretty safe so yeah so if that were the only thing this wouldn't be sort of a priority get

39:10

back in touch with them right now right now exact like the VMware's certainly is precisely precisely okay Patrick so

39:19

we've we've completed part one yes which you know only a few more parts to go but

39:26

I think where we're coming to part two which is usually the easiest part of the form to review and our filer has

39:32

reported nothing how many say William nothing doesn't everyone have debts that

39:37

they ought to report and the answer is probably not so if we look at the

39:44

definitions here we see what we do not report we don't report mortgages so that's a big one for most folks we don't

39:51

report student loans credit card accounts if they come from finance to financial institutions or business

39:57

entities that are granted on terms available to the public so those kinds of loans if you go to the bank and get

40:03

one not reportable right low and secured by automobiles household furniture

40:09

appliances also not reportable right so

40:15

if you have you have a look you have a note on your car not reportable and then

40:20

loans that you the you go to your spouse or to the parent sibling or child of you your spouse or depend on so family loans

40:26

so for most people this is gonna be most of their liabilities are covered in that do not report section so what's left

40:33

well not a great deal you know personal loans between them and maybe friends or

40:39

acquaintances or business folks might be reportable and what we're looking for here really is gifts and gratuities

40:46

that's are disguised as loans so you know if you see someone that's I have a

40:51

hundred thousand dollar loan with zero percent interest in a hundred year term sorry hmm why you know because we wonder

41:00

whether or not their official position or something like that might have influenced the offering of the loan or if this is really a gift or a bribe in a

41:07

different guise but for the vast majority of your 450 filers the typical

41:13

kinds of liabilities they have from you know just living their lives are gonna be from financial institutions on terms

41:19

available to the public in these categories that are not reportable so nothing too surprising here yeah and the

41:24

only other thing with respect to personal loans is that and again I'm not I'm not suggesting that this is going to

41:31

create a great risk or liability but you know if you have a personal loan with someone that does create a covered

41:37

relation right with that individual and to the extent that it's someone who I don't know as a contractor for the

41:43

agency or has some Nexus to the work of the agency that would be something where the employee would have to know that

41:49

they would have to disqualify themselves from any matter that involves that that that individual yep yeah so typically we

41:57

don't see too much here that's a usually pretty straightforward analysis so that took a lot less time than part one yeah

42:06

which brings us to part three and part three is just applies to the filer and

42:15

it requires the reporting of a prior employer of any concurrent outside

42:20

employment including consulting or businesses that the employee owns and certain outside activities so let's take

42:28

a look and and see what we have here so we have the reporting standards up at the top of the part it's useful to look

42:35

through that and basically you know positions that include officer director employee trustee general partner

42:40

prior to representative executor or consultant of corporation partnership trusts or other business entity

42:46

nonprofit or volunteer organization educational institutions state or local governments so if you have an outside

42:52

job basically and that needn't be a paid position if you are you know you can be

42:58

an officer or an executor and not necessarily be compensated but that is

43:03

still reportable and then we have some some do not reports religious entities social entities fraternal political etc

43:09

so our first entry here he reports the

43:15

organization is the CIO Executive Council the type of organization is a

43:20

professional association and the position is board member so this is one

43:27

of those times where the review of the 450 prop form may necessitate the

43:32

beginning of a different process and here if your organization has a prior approval requirement for outside

43:38

activities this may be an indicia that you need to initiate that process yes

43:44

especially for a new entrant make sure they get all the approvals especially if you have supplemental regulations even

43:50

if you don't have a prior approval requirement for the outside activity we now know they have the outside activity

43:56

which means we need to fully advise them about the potential for it not just financial conflicts of interest but are

44:02

there other ethics considerations and we have a whole we have a whole other massive open online course about outside

44:08

activities analyses which if you're not familiar with that I would encourage you to check out but basically means we're

44:14

gonna have to think about every single one of the ethics rules and provide advice but before we do that I think I'd

44:20

like to find out a little bit more about what the CIO Executive Council is to find out how rapidly I need to move into

44:26

that process and I think one of the key things here too is it's not if you look

44:31

at the position that this person holds with this professional association it is one of the positions which under 208

44:40

then imputes the interest of the organization to the the employee herself

44:47

so we really do need to know what the CIO Executive Council does because while

44:52

she is a board member under 208 anything that should do

44:58

that could affect that association in her official capacity would be deemed to affect her financial interest because

45:04

the entire organization's financial interests are imputed to her so for her this analysis sounds a lot like our

45:10

stock analysis it's almost like she is the sole and complete owner of the CIO

45:17

Executive Council and she's the deputy CIO so I don't know I could imagine a

45:23

couple of maybe possible matters I don't know they might provide training for procurement of training it's a

45:28

particular matter it's a contract they may provide materials or support or

45:35

research that our agency procurers and utilizes so this is maybe maybe not the

45:42

same as the VMware but not too far from it in terms of urgency yeah yes so let's

45:48

take a look at what the CIO Council does to see if it can help us find out whether or not we're likely to have a

45:55

potential for conflict of interest so it looks like it's an organization dealing

46:01

with the duties of CIOs that looks if there's a community of CIOs that comprise the council and they

46:08

use the experience of these folks to help advance their careers in their

46:14

organizations and they're committed to validating decision making and mitigating risks share advice among CIOs

46:20

develop business management capabilities of staff and cultivate IT careers and advance the CI role CIO role in today's

46:27

competitive landscape so it sounds like they help CIOs become better CIOs and

46:32

our person is a deputy CIO and I think our suspicions about you know there

46:37

might be training products or research products that we may be interested in buying for the agency or for employees

46:44

of the agency or for staff members of Jill so we're probably gonna want to

46:50

have a chat about the potential for conflict of interest here as well as some of those other ethics concerns that we always have with outside activities

46:56

like misuse of position now using official time for board work you're not using non-public information

47:04

not recommending or endorsing the council to other folks so we're going to have a fulsome discussion and it looks

47:12

like we have a sufficient nexus here that we probably want to get on that pretty quickly yes absolutely and I

47:17

think that depending upon the answers that you get you might very well have to consider asking the individual to

47:25

consider resigning from the position right and again that's a determination you're gonna have to make based upon the facts

47:32

that you have at hand and that's very much dependent on whether and to what extent that you believe that there could

47:40

be some opportunities for the deputy CIO to be advancing the interests of this CIO Executive Council in the context of

47:47

her official duties absolutely and and just for completeness sake I would point

47:52

draw your attention to an exemption in 5 CFR 2644 official position participation

47:58

on boards of nonprofits so if this was something where the CIO say Jill's boss

48:04

said you know it it would be good for our agency to have someone participate on that board that may be a possibility

48:12

it could take care of the 208 concern if the person is officially assigned to that role we still have other concerns

48:19

it doesn't clean up the whole matter but it does make things a little bit easier so if you're a new reviewer I wouldn't

48:25

recommend you sort of execute that exemption on your own but it's enough to be aware that it may be a possible

48:31

remedy in appropriate circumstances here I'm not so sure we made to have a robust

48:37

set of recusal and a lot of things to continue we may consider resignation but it is a possibility yes so the next

48:47

position we're going to look at that I think is is an interesting one is the

48:53

Electronic Frontier Foundation it they've listed the type of organization

48:59

as a coalition which is kind of a little mysterious I think and they're also

49:04

they're also showing that they are a volunteer and a member now when we look

49:11

at the directions for the types of positions that we contemplate it should

49:16

be reported in this section it appears that it's you

49:21

know positions include an officer director employee trust each and a

49:26

partner proprietor representative executor or consultant of any of the following volunteer member doesn't seem

49:34

to fall into that and that comfortably it seems to be maybe not quite important

49:40

enough to qualify for reporting what I

49:47

would suggest to you is before you dismiss anything out of hand as being over reported and therefore not worthy

49:55

of review that if they've if they've placed it there and particularly looking

50:00

at what the nature of this just by virtue of its name appears like it might have some some connection to information

50:08

technology its Electronic Frontier Foundation yeah it's worth your while this is one of those times where it is

50:14

worth your while to take a look at it inform yourself about what the organization is before you automatically

50:19

dismiss it as it's over reported I don't need to look at it they shouldn't have reported it and and and to ignore it and

50:26

move on so we should not just get out our electronic correction fluid remove it and pretend we've never seen it

50:31

precisely precisely so again this is one of those things where if you have prior

50:37

approval requirements you have to know whether or not this type of position would or wouldn't be subject to your

50:43

prior approval requirement again that's not something that we can necessarily answer for you but it's something that

50:49

you should ascertain for yourself right um and I think that we we look at what

50:56

EF F is and they are they do have a presence on the internet and we look at them and it says the Electronic Frontier

51:03

Foundation is the leading nonprofit defending civil liberties the digital world champion's user privacy free

51:11

expression innovation through impact litigation C analysis grassroots

51:18

activism and Technology Development I think that just based on that paragraph

51:26

alone it gets even richer the longer the further down you go I think from that paragraph

51:31

we get a real flavor flavor for the nature of this organization right and I

51:36

think principle among those attributes is I would call this an advocacy organization so if it's an advocacy

51:46

organization Patrick what are some concerns that we might have even if this

51:51

is a non paid position even if this isn't employment even if this has you know that has no attachment firmly to

51:59

2:08 what other things might we be concerned about yeah I think we're concerned about some of those other laws

52:07

under Title 18 principally I be concerned about 18 USC Section 205 and

52:13

if you're not familiar with 18 USC section 205 this is the prohibition on representing third parties back before

52:19

the government as a federal employee and that's to the whole government so maybe you work at the Department of

52:26

Agriculture and Jill's your deputy CIO and you say you know what the Electronic Frontier Foundation is not going to be

52:32

advocating to USDA for more Internet freedom they're going to be advocating

52:38

to the the FCC for example well section 205 doesn't care so regardless of

52:51

whether you work at the Department of Agriculture or the Department of Energy or the that the Federal Communications

52:57

Commission you have the same problem which is that you can't represent third parties back before any part of the

53:03

government so that's that would be a standout concern the potential for misuse here is maybe a secondary concern

53:10

you know you could see use of official time non-public information or even advocacy in the workplace in the form of

53:16

endorsement yeah so there's a whole panoply of ethics law and regulation

53:22

that we would have to be concerned by again notwithstanding that this is a volunteer position or a mere membership

53:29

in the organization so again I wouldn't allow sort of the technical of a

53:35

reporting aspect of this to sort of steer you away from doing the analysis

53:41

because you can have serious ethics concerns with precisely

53:46

those types of outside involvement I think this is a good place to make a little bit of a programmatic point the

53:53

financial disclosure system is designed to balance employees privacy and the

53:58

efficiency of review with the need to manage the potential for ethics risk so just because something is not reportable

54:05

doesn't mean it can't pose a problem and vice versa so this is something that I

54:10

might want to cover in training if you know you have folks that are involved in this kind of thing say you know we we

54:16

want to help you do these kinds of specific activities but we want you to do them correctly and avoid problems so

54:22

if you want to become involved in those who don't maybe don't have to put it on your 450 but please come talk to us so we can let you know where the where that

54:29

the edges are so you don't accidentally get in trouble because that's really what we're trying to avoid no one wants that I mean because they don't you for

54:35

example we don't have a prior approval requirement but as part of my new employee orientation I always inform

54:41

people that in particular 205 is a trap for the unwary and it is it's a very

54:46

broad statute it it winds up covering behaviors and conduct that I don't think

54:53

would be intuitively obvious to any number of people and I think that that

54:58

it's important that employees be aware that there are some dangers out there it's so the seeking advice isn't with a

55:04

view to prohibiting people from me from rightfully engaging and private activity

55:10

it is simply a matter of making sure that you're protecting them when they do so but you're also protecting the

55:15

agency's equities as well absolutely so and we didn't cover city of

55:22

Philadelphia because I think we have fairly fulsomely covered city of Philadelphia for purposes of what was

55:28

disclosed on part on part three so we're gonna move on to part four Patrick if

55:33

you would like to so part four we're gonna have agreements for outside

55:39

employment and this will include teaching speaking and writing will also see retirement and other benefits from

55:44

prior employers as well as any leaves of absence so let's see what we have here

55:52

hmm our first entry is with the University of Maryland and it looks like

55:58

it is an arrangement or agreement for future employment which is to say this

56:03

person is telling us they're gonna teach a class at the University of Maryland in the spring which is pretty soon yes

56:09

that's now pretty soon so this is another case where if you have a outside

56:17

given prior approval requirement this may commence that process and you may want to do that even if you don't you

56:25

should provide full advice on this outside activity so if you have a prior approval standard our form or process

56:32

make sure the employee knows to go through that process because again we're talking about a new entrant they'll be

56:37

equally true for an annual that you hadn't seen but on an annual report you may be able to look in the filers file and see we've already done this we've

56:44

given them the advice they've been approved so we can move on with a new entrant you're probably gonna have to start from the beginning so do we have

56:53

issues or concerns here well we do have a regulation that's specific to writing

56:58

teaching and speaking and that's 5 CFR 26:35 807 so we're gonna want to pay

57:04

special attention there when we're conducting our outside activities analysis and indeed in the outside

57:09

activities massive open online course we cover a situation almost just like this

57:15

potential for conflict of interest I guess that depends on your agency and I

57:20

would be very cautious when thinking about 208 with respect to universities because oftentimes we have sort of a

57:26

blind spot for institutions of higher education they say you know how can that really be a conflict of interest but we

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have a lot of employees who are maybe engaging and teaching activity are invited to speak as experts in their

57:39

field by universities who are currently attending maybe as part of their official duties classes or professional

57:45

enrichment opportunities and we may buys things from universities like research or or publications and in this case we

57:53

might have an employment relationship that would mean that the University and Jill are basically the same just like

57:59

the stock holding so this might not look like a big concern but I think there is

58:05

some to be worried about and just to give you an example so say say our filer is a

58:10

full professor um and she's teaching this class in the spring and maybe has done for some some time so she's an

58:17

employee of the organization she says you know I have a subordinate who would

58:23

really benefit from a class at UMD I was there the other day I saw them on the advertiser on the board and she goes

58:30

into the the workplace on Monday and sister subordinates she says you know what you should really consider signing up for that you you put together the

58:36

training request and I'll sign it we've just had a 208 violation

58:42

likewise if Jill is going through the teaching of the class and gets to the

58:47

section on on on security internet security and says you know what our

58:52

chief security officer really is good at documentation for security systems and I

58:58

think I think she would be a great addition to my seminar and so when she gets to the to the back to our office at

59:05

U Marilyn she fires off an email to that colleague back at the agency and says you know it would you like to join us as

59:11

an instructor for this week may have just violated 18 USC Section 205

59:18

so there is some risk here are they manageable I think absolutely they're manageable but it is something you don't

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want to ignore this you want to focus on it and provide as complete advice that you possibly can we've pretty fulsomely

59:38

covered this with respect to part one the 457 deferred compensation plan as it

59:44

is being disclosed here is probably over reported because if we look at what you

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do not report with respect to agreements and arrangements we say that you don't have to report a continuing

59:57

participation in a defined contribution plan such as a 401k plan or in this case a for 457 deferred compensation plan to

1:00:05

which an employer is no longer making contributions so the presence of this on

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the schedule sort of beggars the question is your prior employer

1:00:17

continuing to make contributions to this plan and that's the reason that you have decided to disclose it so this would be

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something we would want to follow up with a fire on confirm that there are no further employer contributions and well

1:00:30

I have noted on there as well no 209 and the reason I have listed on that form no

1:00:36

209 is because when it comes to unusual

1:00:43

arrangements when someone leaves a place of employment to come into the government and we sometimes want to look

1:00:51

into those and I think having an employer continue making contributions to a retirement plan after someone has

1:00:56

left that organization is quite unusual right so if that is actually occurring we want to make certain that the reason

1:01:03

that that's occurring is a customary part of the employment agreements and

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benefits that that employer offers to all of its employees and that it's not in any way being offered because Jill is

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coming into government service and we see this sometimes with respect to

1:01:23

leaves of absences from universities or sometimes from particular benefit

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packages that some entities give employees when they go into government

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service that they have a policy of if if our employee is going on a leave of

1:01:43

absence to go into government service we offer them additional benefits that we don't offer if somebody's going on a

1:01:49

leave of absence to go someplace else good so so whenever you're whenever you see an agreement or arrangement from a

1:01:55

prior employer in the context of a leave of absence or in this case where it looks as though they may have

1:02:00

inadvertently reported it here and just didn't realize it wasn't reportable right but if you if the answer is yes my

1:02:07

my prior employer is continuing to contribute that is certainly something you're going to want to followup on

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because it is unusual and then any time those kinds of benefits are being

1:02:18

offered because of government service we have a potential 2:09 concern yeah I mean a weason we do see this less often

1:02:26

on the confidential financials closer reports because usually people are coming in from more sort of just regular

1:02:31

salary type position but we do see with us some some political appointees if they're coming

1:02:37

in where they were serving on say a corporate board or something and it's not even necessary nefarious on the part

1:02:43

of the company they said they're taking a big pay cut to go engage in public service we'd like to help them with that so we're gonna come up with some plan to

1:02:51

sort of plus them up and unless that's pursuant to an established policy that's

1:02:58

not specific to federal employment it may be violative of 2:09 so we really

1:03:04

have to do that analysis you know and it isn't I don't think that the people are trying to buy favoritism but they're

1:03:10

trying to reward public service but the law is sort of indifferent to the motives and so the if the reason that

1:03:15

you're giving this payment is because of their service to the government that's that's generally prohibited under 209 so

1:03:22

now without complicating matters for you we we flagged 209 in this instance

1:03:27

because under most circumstances if a former employer is as I said offering a benefit that seems to be in any way

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that's unusual and seems to be tied to government employment that's a perspective or a potential supplementation of salary issue under

1:03:41

209 if you look at 209 you will find that there is an exception for funds

1:03:48

that are coming from a state or local government so in this instance because it's the city of Philadelphia rather

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local government and 209 is not going to be a concern simply because state and local

1:04:01

governments happen to be excluded from the coverage of 209 but so in this

1:04:08

instance we know 209 it's not a problem because it's the city of Philadelphia but we wanted to flag it as a 209

1:04:13

because not every time are you going to be dealing with a state or local government yeah and I think that's a that's a good sort of finishing point is

1:04:19

to keep your eyes open you know we focus so much on the 208 conflicts of interest when we're doing these reviews and just

1:04:25

keeping your mind open to the possibility of other attending ethics concerns is really important and can help you provide more complete advice

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and hopefully avoid some problems well I that is our coverage of this

1:04:36

review for today I hope that you found this helpful I hope that you all had had

1:04:41

an opportunity to try to practice doing this yourself so that you could see maybe where you got it right

1:04:47

right and things you may have missed this is something where the more you do it the better you get at it absolutely

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don't feel intimidated if there were things that you didn't get off the off the bat today we gave you a copy of a

1:05:01

completed exercise worksheet that's on the ieg site so if you have some

1:05:07

questions you can things that you maybe think you missed you have that as a reference tool to look at also obviously

1:05:14

the broadcast remains on the ieg for you to come back to and revisit at your

1:05:20

leisure absolutely and remember the guide is available and it contains valuable information to assist you in

1:05:26

your reviews so so we wish you a productive and useful confidential

1:05:31

financial disclosure season and we'll see with another broadcast on the other side of the national government ethic

1:05:36

summit thanks very much

English (auto-generated)