hello everyone I'm Cheryl cane piasecki

0:03

with the Institute for ethics and

0:04

government and I want to welcome you to

0:06

part one of a three-part introduction to

0:08

public financial disclosure now in

0:11

public financial disclosure as in many

0:13

things in life I think we need to begin

0:15

by asking and answering for ourselves

0:18

the question why why do we do public

0:22

financial disclosure now I know for many

0:25

of you who are probably new to financial

0:27

disclosure you're anxious to answer the

0:30

questions what is it that I have to do

0:32

and how is it that I have to do it but

0:35

for now we're gonna resist the

0:37

temptation to answer those questions

0:39

why because purpose is paramount for

0:48

your filers understanding the purpose of

0:51

public financial disclosure provides

0:55

them with a context which may help them

0:58

to respect a process that they otherwise

1:01

feel or could feel is often quite

1:05

intrusive and it also provides them with

1:08

some assurances that what you're asking

1:10

them to do is more than just a paperwork

1:13

exercise for self certainly

1:17

understanding the purpose of public

1:20

financial disclosure helps us to do that

1:23

job better but it also allows us to

1:27

explain to leadership exactly how

1:30

important our work is in supporting and

1:34

protecting the mission and reputation of

1:37

the agency

1:41

so why do we do public financial

1:44

disclosure I think we want to begin by

1:47

looking at the public aspect of this

1:50

disclosure system part of the role and I

1:53

guess someone stayed the actual duty of

1:55

the public in any Democratic Society is

1:59

to assist in holding government

2:02

officials accountable to ensure that

2:05

government officials are carrying out

2:07

their duties in the public's interest

2:08

and not in their own personal interests

2:10

and to do that obviously the public has

2:13

to have access to information so that

2:16

they can independently assess the

2:19

personal financial and other interests

2:21

of their leaders and then decide whether

2:23

they think those interests might

2:25

actually conflict with the conscientious

2:28

performance of those leaders duties this

2:33

transparency in making the disclosures

2:36

public is critical to government ethics

2:39

so one of the critical purposes of

2:42

public financial disclosure is to

2:45

increase transparency and thereby

2:48

accountability to the public now to

2:53

facilitate this transparency Congress

2:55

enacted the financial disclosure

2:57

provisions of the ethics and government

2:58

Act

2:59

so the ethics and government act is the

3:01

statutory authority that dictates the

3:05

requirements for public financial

3:07

disclosure by senior government

3:10

officials across all three branches of

3:13

the government the ogee form 278 II and

3:17

the OGE form 278 T contain the

3:22

information that the Act requires filers

3:25

to disclose but more than disclosure for

3:31

the sake of transparency and

3:33

accountability the financial disclosure

3:36

system is also a prevention tool it's a

3:40

tool that agencies use to identify

3:42

potential conflicts of interest between

3:45

a filers official duties and the filers

3:48

private financial interests and

3:50

affiliations and then to remediate any

3:53

potential conflicts that

3:54

that they identify before those can

3:57

cause harm to the programs and

3:59

operations of the agency

4:00

so this systematic review that we

4:03

conduct at the agency level of these

4:05

financial interests of both our current

4:08

and our prospective employees we use

4:11

those reviews to mitigate ethics risks

4:13

to our agency in this respect financial

4:19

disclosure the filing and review is

4:22

something of an ethics checkup and the

4:28

goals of that checkup similar to other

4:32

types of checkups we receive are to

4:34

prevent ethics issues where possible and

4:38

then certainly to fix them when we find

4:42

them so when your filers come to you

4:46

they've submitted their to 70 80 or

4:49

they're to 70 80 they are in effect

4:52

requesting your advice what do you see

4:55

what do you think is there anything I

4:59

should be worried about and your review

5:03

and if necessary any remediation that

5:07

you think is required are both a

5:10

counseling moment and they're also an

5:13

opportunity to educate your filers so I

5:17

would encourage you to capitalize on

5:19

that improve your bedside manner as it

5:23

were and and make that opportunity count

5:26

because this may be your employees first

5:30

and most lasting impression of ethics

5:35

so to perform this checkup in the

5:38

broadest terms you're gonna have to know

5:41

these two things you're gonna have to

5:45

have some understanding of the work that

5:47

the employee is going to perform for the

5:48

government the employees duties and then

5:51

what the information that they actually

5:54

disclose on the two seventy eighty or

5:57

the two seventy eighty which is what

5:58

their private interests and affiliations

6:00

are now why do we need these two pieces

6:03

of information because the primary

6:06

conflict of interest statute 18 USC

6:08

Section 208 is really a nexus test it is

6:13

we look for the nexus between the

6:17

employees government work and any effect

6:20

that that work could have on the

6:23

employees personal interests and

6:26

affiliations so if you don't have both

6:30

of these pieces of information you

6:32

simply can't assess the potential for

6:34

conflict which basically means that you

6:37

can't do the checkup now the primary

6:43

conflict of interest statute is one of

6:46

the primary concerns and objectives of

6:48

our substantive reviews but the actual

6:52

conclusion that the agency must reach

6:54

through its review of the public forms

6:56

is more far-reaching by signing the form

7:01

the agency ethics official is concluding

7:05

that the filer is in compliance with

7:08

applicable laws and regulations

7:15

part of this conclusion involves

7:18

concluding that the filer has materially

7:20

complied with the reporting requirements

7:23

of the ethics and Government Act and its

7:25

implementing regulation 5 CFR 26 34 and

7:29

we make that determination obviously

7:31

based upon the information that the

7:33

employee has disclosed on the form this

7:35

is the technical review aspect of your

7:39

review process and your reviewing for

7:43

legal sufficiency with the disclosure

7:46

requirements under the Act your

7:50

substantive review includes all of the

7:55

criminal conflict of interest statutes

7:57

including obviously 18 USC Section 208

8:01

but it's also going to involve making

8:03

sure that the employee is in compliance

8:05

with the standards of ethical conduct

8:07

and any agency specific regulations that

8:10

you may have including any prohibited

8:13

holdings restrictions our goal in

8:20

preventing ethics issues where possible

8:22

is not just one of preventing the

8:27

violation of law and the consequences

8:29

that ensue for the individual filer we

8:34

have a not an obligation to understand

8:37

and also to be able to explain to not

8:40

only our filers but our agency

8:42

leadership what harms we are actually

8:46

hoping to prevent harms to the agency

8:49

and to the government so the harms we're

8:53

trying to prevent our bias in

8:55

decision-making which can lead to a loss

8:58

of credibility and a loss of public

9:00

trust we risk mission failure if we have

9:05

employees who are engaging in either

9:07

criminal activity or even in non

9:10

criminal unethical activity that can

9:13

lead to investigations and legal

9:15

challenges that derail our ability to

9:18

successfully achieve our mission

9:23

in fixing what we find

9:30

requires that we be fully familiar with

9:33

and fully prepared to use all of the

9:36

appropriate remedies at our disposal

9:38

these remedies can help us to protect

9:41

the agency from reputational risk and

9:44

prevent harm to mission so coming back

9:50

full circle in every conversation we

9:53

have with our filers and certainly in

9:55

every review we perform the purpose of

9:58

public financial disclosure should

10:00

always be front of mind why because it

10:04

provides meaning and context to what we

10:06

ask of our employees and to the work

10:09

that we perform as ethics officials next

10:13

up in part two of the introduction we'll

10:16

discuss how best to prepare you for your

10:19

public financial disclosure roles and

10:22

we're going to begin with the essentials

10:25

your tools

hello everyone and welcome to part two

0:02

of an introduction to public financial

0:04

disclosure i'm sheryl kane piosecki

0:08

the statutory requirements of the public

0:10

financial disclosure program

0:12

are actually quite extensive and complex

0:16

they require that you have systems and

0:18

policies

0:19

and procedures in place to identify

0:23

public financial disclosure filers and

0:25

notify them

0:26

of their reporting requirements to

0:29

ensure that they filed their reports in

0:31

a timely way

0:32

and to make sure that you have an

0:34

adequately trained staff to conduct

0:36

reviews and certifications of those

0:39

reports

0:40

you also have to manage those reports

0:43

according to

0:44

records management practices and

0:48

when requested by the public you have to

0:50

have a system in place for making some

0:51

of those documents

0:53

publicly available that's a lot

0:56

so today in order to help you

1:00

we're going to be taking a look at some

1:01

of the tools that oge has available

1:04

to help you do those various and sundry

1:07

roles and responsibilities that in here

1:10

in your public financial disclosure

1:11

program

**WWW.OGE.GOV**

1:15

we're going to start with oge's publicly

1:17

facing website

1:19

www.oge.gov og's website

1:22

is a repository of many many

1:26

resources for you here you're going to

1:28

find all of the legal authorities

1:31

that you will need to be familiar with

1:32

in order to conduct both their

1:34

technical reviews and your substantive

1:36

reviews

1:37

um there are oge advisories that we

1:39

issue periodically dealing specifically

1:41

with public financial disclosure that

1:43

are housed in our

1:45

advisory uh tab there are also

1:48

education and training materials that

1:50

are available to you to get your staff

1:52

and yourselves well trained up

1:56

on the requirements of the review and

1:59

certification of public financial

2:00

disclosure

2:04

and of course we have resources that are

2:06

dedicated

2:07

explicitly and exclusively to public

2:09

financial disclosure and that is found

2:11

under the financial disclosure tab on

2:13

our website

2:16

the public financial disclosure forms

2:18

that employees are required to file

2:22

are located here in our oge forms

2:25

library

2:26

now these are hard copy if you will

2:30

versions of the forms and this is for

2:32

those folks who aren't using

2:34

integrity which is the electronic filing

2:36

system

2:37

that og created

**WWW.INTEGRITY.GOV**

2:42

if you are using integrity and are

2:44

electronically filing and reviewing

2:46

then integrity.gov is the place where

2:49

you should go

2:50

to learn more about the processes and

2:54

procedures and

2:55

the ways in which integrity operates

2:58

and within integrity itself there are a

3:01

battery

3:02

of repository of resources and tools

3:05

that you can access

3:06

within integrity itself so if you are in

3:09

integrity

3:11

on your landing page and you're finding

3:14

in the

3:14

as you're conducting a review that you

3:16

need some assistance

3:18

there is a help function and within that

3:20

help function

3:22

you can find links to the resources that

3:24

you will need to help you

3:26

do whatever you need to do once you're

3:27

actually in the system

3:29

and that includes accessing the max.gov

3:32

page

3:33

where there are even further resources

3:37

with respect to helping you navigate

3:39

integrity

3:41

whether you're a filer or a reviewer or

3:44

an administrator

3:48

in addition to those resources

3:51

one of the resources we're going to be

3:52

spending most time with today and

3:54

certainly in part

3:56

three are public finance the public

3:58

financial disclosure

4:00

guide but there are some additional

4:03

resources for public financial

4:04

disclosure that are also

4:06

located on the same tab

**5 CFR 2634 PROGRAM REQUIREMENTS**

4:11

now the public financial disclosure

4:13

guide is effectively

4:16

the guide which contains the 2634

4:20

program requirements

4:21

particularly as they address

4:24

filing of 278es and

4:27

t's

**The Guide also available in PDF**

4:31

the guide which is an electronic form on

4:34

our website is also available in pdf

4:37

so there might be some of you who would

4:39

like to have both versions available

4:41

i know for some folks searching in pdf

4:43

is easier

4:45

but i just wanted you to be certain that

4:48

you were aware that you there are two

4:49

different versions of this that you can

4:51

avail yourself of depending upon

4:53

what structure you prefer

4:58

when you open the public financial

5:00

disclosure guide

5:01

you'll see to your left there these tabs

5:04

are

5:05

directed to and written for filers to

5:08

assist them

5:09

in filling out their 278e or their 278t

5:16

and at the bottom of that list of tabs

5:18

there's a tab for you

5:20

the ethics official and when you open

5:22

that

5:23

it opens up a separate table of contents

5:26

that run

5:26

parallel to the table of contents for

5:28

filers

5:29

now within this table of contact

5:32

contents

5:34

there are some sections that deal more

5:36

with administrative aspects of filing

5:40

as opposed to specifically the various

5:43

parts

5:44

of the 278e or the 278t

5:47

so these reside in section 1

5:51

which deals with types of reports and

5:53

filing deadlines

5:54

individuals who are required to file

5:57

forms and methods of filing

6:00

extensions late filing fees failure to

6:03

file or falsification

6:06

and written procedures and in a moment

6:08

i'm going to walk through

6:10

that portion of the guide and highlight

6:13

some additional information that's there

**Section 4**

6:16

section 4 also has some administrative

6:20

types of guidelines with respect to

6:23

the filing and management of

6:27

of the 2780 and the 278t

6:30

and this is dealing with the public

6:32

availability of reports

6:34

records management of those reports

6:37

forwarding those reports to oge

6:39

for those reports that are required to

6:41

be forwarded to oge

6:43

and there are some special procedures

6:45

that apply to

6:47

nominees to presidential appointments

6:50

that are

6:50

require senate confirmation

6:54

with respect to the technical review of

6:57

the 278e

6:58

and the 278-t

**Sections 2 and 3**

7:02

section two sections two and three are

7:04

the sections that deal specifically with

7:07

instructions for filling out

7:11

and for reviewing sections two and three

7:14

we are going to be covering sections two

7:16

and three

7:17

in part three so we will be going into

7:20

much greater detail

7:22

about each of the separate parts of

7:25

section two

7:26

in uh in part three

7:30

for your substantive review

**CONFLICTS OF INTEREST**

7:34

oge has a series of guides that analyze

7:37

potential conflicts of interest

7:42

and the analyses in each of these guides

7:45

addresses discrete types of holdings

7:48

or particular ways in which someone

7:50

could have a financial interest that

7:51

could create a conflict of interest

7:54

so we have a guide that deals with

7:56

analyzing conflicts that arise from

7:58

the holding of certain assets that arise

8:01

from private investment funds

8:02

and employment with an investment fund

8:04

that arise from liabilities

8:06

common employment interests business or

8:09

farm ownership

8:10

corporate employment law firm or

8:13

consulting employment

8:15

employment with institutions of higher

8:16

education and related research speaking

8:18

and writing activities

8:22

you can find these guides from our home

8:26

page

8:27

if you click on financial conflicts of

8:29

interest

8:30

as a topic that's on the home page the

8:33

analyzing potential conflicts of

8:35

interest

8:35

guides the link to those guides is

8:37

located there

**IEG Resource Library**

8:41

in addition to those resources the

8:43

institute for ethics and government

8:45

has a resource library that has a

8:47

variety of distance

8:49

learning videos materials

8:52

and job aids that you can use for your

8:54

own professional development

8:56

with respect to improving your

9:00

technical and your substantive knowledge

9:03

and skills for purposes of performing

9:06

your review functions with public

9:09

financial disclosure

9:12

so now i want to highlight some sections

9:15

one

9:16

uh parts to give you just a little bit

9:18

of additional information

9:19

about what you'll find within that

9:22

section

**Reports and Deadlines**

9:26

section one talks about the types of

9:29

reports

9:29

and the filing deadlines for those

9:31

reports

9:33

now there are a variety of reports that

9:35

have different triggering events

9:37

that require someone to report and those

9:40

different reporting events have

9:43

different deadlines

9:44

which involve day counting so for your

9:47

for your nominees there are certain

9:50

triggering events

9:51

and deadlines for people who have been

9:53

nominated to

9:54

a presidentially appointed and senate

9:57

confirmed position

9:59

your new entrant reports are going to be

10:01

for those people who are newly entering

10:03

a public filing position that might be

10:06

someone who is newly coming into

10:07

government

10:08

but quite often it also involves folks

10:10

who are simply

10:12

being promoted from one government

10:14

position to another

10:15

or whose duties are changing and

10:18

they are they they now encumber a

10:21

position

10:22

that requires reporting there is of

10:24

course

10:25

annual filing requirements every may

10:27

15th

10:29

for people who have encumbered a filing

10:31

position

10:32

for more than 60 day for 60 days or more

10:34

in the preceding calendar year

10:37

and then there is a termination report

10:38

requirement which is triggered by

10:41

a person leaving a covered public filing

10:44

position whether or not

10:47

that also means they're leaving federal

10:49

service

**2020 Annual Reports (PA-20-02)**

10:52

for purposes of the annual reporting

10:55

deadlines

10:56

this is another resource that you want

10:58

to be aware of every year

11:00

oge issues a program advisory

11:04

which just explicitly discusses the

11:06

deadlines

11:07

for the annual reports for that annual

11:10

reporting cycle

11:12

we issued this program advisory back

11:16

in april on april 2nd

11:19

and you can find those advisories here

11:21

on oge's website under the og

11:23

advisory tab

**Who Files?**

11:29

section one also addresses who is

11:31

required to file

11:33

a public financial disclosure report

11:36

now this is a statutorily based system

11:39

so unlike the confidential financial

11:41

disclosure system where the agency has

11:43

great discretion to decide who files

11:46

there is there are some instances of

11:49

flexibility

11:51

in the statutory system but for the most

11:53

part

11:54

the statute dictates who has to file

11:57

one of the largest groups of filers that

11:59

you're going to be dealing with in your

12:01

public financial disclosure system

12:03

are the ones who fall within this

12:04

definition and more specifically

12:07

are those who are

12:11

paid under a system that is other than

12:13

the general schedule

12:15

and whose rate of basic pay is 120

12:19

of the rate of basic pay

12:22

for a gs15 now

12:25

that seems to be a pretty complicated

12:30

definition and it involves math

12:33

so oge does not expect you to do the

**2020 Pay Threshold-LA-20-01**

12:36

math

12:37

so again every year after the pay tables

12:39

have been

12:41

supplied by opm oge issues a legal

12:45

advisory

12:46

where we have done the calculation of

12:49

the 120 percent

12:52

of the minimum rate of basic pay for

12:56

the gs15 of the general schedule so for

12:59

effective january 5th 2020 for the 2020

13:03

calendar year that threshold is a

13:06

hundred and thirty one thousand

13:08

two hundred and thirty nine dollars

**Equal Classification**

13:13

now as i said there are some

13:15

flexibilities that are provided in the

13:17

statute

13:18

that extend beyond the definitions of

13:21

covered position

13:23

one of them is the concept of equal

13:26

classification determinations

13:28

and this is where your agency

13:31

may have positions people who are

13:33

encumbering positions

13:35

that are equal to

13:38

the types of positions that normally

13:40

would be required to file a public

13:42

financial disclosure report

13:44

in those instances if you feel that

13:46

these are people who should be filing a

13:48

public financial disclosure report

13:50

you can request an equal classification

13:52

determination from the office of

13:54

government ethics

13:55

and that is explained in this part of

13:58

section one

**60 Days or Less**

14:00

likewise there is an exclusion element

14:04

in the statute for people who serve for

14:07

60 days or less

14:09

in positions that would otherwise

14:11

require public financial disclosure

14:13

filing

14:14

there are a variety of circumstances and

14:16

considerations

14:18

that have to be made including day

14:19

counting how do you count

14:21

what constitutes 60 days or less that is

14:24

all discussed

14:25

in section 1 of the guide similarly

**Schedule C Exclusions**

14:30

there

14:31

are exclusion provisions for schedule c

14:33

positions

14:34

now what this means is that the

14:36

predicate is

14:37

that people who encumber schedule c

14:40

positions

14:41

by definition are supposed to file a

14:43

public financial disclosure report

14:46

however there is an exclusion provision

14:49

that allows in the first instance

14:51

agencies to make a written determination

14:54

that certain employees who are at or

14:57

below the gs 13 grade level

15:00

do not have certain types of

15:02

responsibilities that would require them

15:04

to file

15:05

a public financial disclosure report and

15:08

the agency has the discretion to make

15:10

those determinations

15:11

for those grade level positions for

15:14

employees who encumber schedule c

15:16

employees who encumber positions that

15:18

are above the gs 13 rate

15:21

any request for an exclusion from filing

15:24

would have to come to oge for our

15:26

determination

15:29

section one also talks about how we

15:31

handle and how we deal with

15:33

a variety of different types of

15:35

employees including

15:37

special government employees

15:39

particularly those who serve on federal

15:40

advisory committees

15:42

detail these and particularly detail

15:45

these who come to us

15:46

under the intergovernmental personnel

15:48

act

**Filing Extensions**

15:52

section one also discusses filing

15:54

extensions

15:56

as we know filing extensions are within

15:58

the purview of the agency

16:00

to to approve

16:03

this discusses when those determinations

16:05

have to be in writing

16:07

it discusses what form the request must

16:09

take

16:10

and what form the approval must take and

16:12

most importantly it gives you some

16:14

baseline

16:15

understanding of what constitutes a good

16:17

cause

16:18

for approving a filing extension that

16:21

someone

16:22

might request

**Late Filing Fees**

16:25

section one also discusses late filing

16:27

fees

16:28

and in this instance it's discussing

16:31

when and how do you give notice of the

16:33

late filing fee to the filer

16:36

how do you collect the late filing fee

16:38

and how do you waive

16:39

the late filing fee

**Penalties for Failing to File**

16:43

there are also penalties for failing to

16:45

file and this is distinguishable from a

16:47

late filing fee

16:49

if you have recalcitrant employees

16:53

who willfully fail to file who file

16:57

false information or who willfully

17:00

fail to provide information that's

17:02

required to be provided on the report

17:05

there is recourse that the agency can

17:06

take and that's discussed here

17:09

the agency certainly can take

17:10

disciplinary action on its own

17:12

but it also can make referrals to the

17:15

department

17:15

of justice for either civil action or

17:18

potentially criminal action

17:20

so there is recourse when you have a

17:22

filer who willfully

17:25

fails to file falsifies information

17:28

or willfully fails to provide

17:30

information that's required to be

17:32

disclosed on the report

**Written Procedures-DA-09-03-92**

17:35

finally we discuss written procedures in

17:38

section one

17:39

and written procedures are really

17:41

critical and i've given you a copy of

17:43

the original deogram that went out in

17:44

1992

17:46

describing what your written procedure

17:48

should contain

17:50

i know that for some folks it may seem

17:52

like it is administrative

17:54

minutia that we're engaging in with

17:56

written procedures

17:57

but i assure you they're critical

18:00

they're critical for succession planning

18:02

they're critical to make sure that

18:04

everyone who has a role

18:06

in this very multifaceted system

18:09

understands what the role

18:10

is understands who's responsible for

18:13

what

18:14

and particularly if you leave if you're

18:17

the designated agency ethics official or

18:19

the adeo and you're leaving your

18:21

position you want to make sure that the

18:22

person who follows in behind you

18:25

is not having to completely reinvent

18:27

those policies and procedures

18:29

and it's just as kind of a matter of

18:32

heads up

18:33

written procedures are something that

18:34

the program review

18:36

group at oge will be keenly interested

18:39

in seeing

18:40

when they come in to evaluate your

18:42

program

18:44

for compliance with applicable law and

18:46

regulation

18:47

so if you don't have written procedures

18:49

you should probably get them

18:51

if you do have written procedures you

18:53

should probably periodically

18:55

revisit them to make sure that they're

18:57

up to date and to make sure that they

18:58

really reflect

19:00

the way that you conduct and operate

19:02

your

19:03

your public financial disclosure system

19:07

so in part three as i said we're going

19:09

to be discussing specifically review and

19:11

certification

**Section 2 278**

19:14

we're going to be looking at section 2

19:16

of

19:17

the public financial disclosure

19:19

reviewers guide so that we can become

19:21

familiar with the requirements of the

19:23

review

19:24

of the oge 278

19:29

e

hi everyone and welcome to part three of an introduction to public financial disclosure I'm Cheryl cane piasecki in

0:07

part one of this series we discussed the goals and purposes of public financial

0:13

disclosure and one of the most critical roles that public financial disclosure plays is in helping us to identify to

0:21

prevent and to certainly remediate any potential or actual conflicts of

0:26

interest or other ethics concerns before they have a chance to harm the program's operations and reputations of our

0:34

agencies and in order to do that we really have to have a well-trained staff

0:39

to conduct robust reviews and certifications of the reports that we

0:44

receive and in order to do that today we want to spend a lot of time talking

0:50

about your roles and responsibilities as reviewers and certifiers to show you how

0:57

you can use the tools that you have at your disposal in your agencies and then

1:02

OG is provided to make sure you can play whatever part you have in this process

1:07

to the best of your ability so we're gonna start with who certifies who has

**Who Certifies?**

1:15

the authority to certify who can act in the role of certifier and the fact of the matter is of course the designated

1:22

agency ethics official and the alternate have the authority to certify public

1:28

financial disclosure reports but they can also the designated agency ethics official can also delegate that

1:34

authority from virtually all public financial disclosure reports to other

1:39

people deputy ethics officials deputy ethics counselors or anyone who holds a

1:45

similar or equivalent position the only exception to that is in the case of

1:50

nominees to presidentially appointed senate-confirmed positions and in that

1:55

circumstance either the Deo must certify or the alternate Deo may do so in the

2:01

day of absence so a variety of people within your program can have the

2:07

authority to be a certifier so who can review now there are various

**Who Can Review?**

2:14

levels of review that can occur and whether or not an agency has someone

2:19

other than the certifier conduct an intermediate review I think varies depending upon the staff

2:25

levels you have and certainly the volume of public financial disclosures that you have to review but there are two types

2:34

of intermediate reviews that we address explicitly in our our public finance

2:39

disclosure reviewers guide one our full intermediate reviews now these are

2:45

intermediate level reviews which are the functional equivalent of a certifying review which is to say that they meet

2:52

all of the standards that are required of certification so people who are

2:58

conducting a full intermediate review are doing both a technical review of the

3:03

form to make sure that it meets all of the reporting requirements they're doing a substantive review of the form to make

3:10

sure that there are no conflicts of interest or potential conflicts of interest or other ethics concerns raised

3:16

by anything that the filer has disclosed and then these these people in doing the

3:22

full intermediate review also have the ability to apply remedies to any

3:29

potential or actual ethics issues that they find so if you have someone on

3:35

staff who is going to be conducting a full intermediate review in support of

3:42

the certification they have to have the training and ability to perform a full

3:48

fledged review to the certification requirements now there are some agencies

3:53

particularly I think those that have a an enormous number of public financial disclosure reports to review who may

4:01

triage the review of reports and provide certain individuals with

4:07

responsibilities for only conducting a very limited intermediate review and this might involve simply reviewing the

4:15

report to make sure that all of the parts have been filled out correctly or if there is nothing to report that that

4:21

has been noted as well it could be more extensive where where that individual will do a review to make

4:28

sure that it appears as though the all of the parts are not only filled out but

4:33

that they do appear to be materially complete whether that review is limited

4:40

to simply making certain that all of the parts are the boxes are checked or

4:46

something a little bit more substantial those individuals also have to have the

4:51

training to be able to adequately discern those things so whether it's a

4:57

limited review or a more substantial intermediate review it is really imperative that anyone who's playing any

5:04

of those roles is doing it robustly because it's all with a view to

5:09

supporting the certification the eventual certification of those reports

5:14

so what does certification mean what are we certifying to so to certify the

5:21

report the reviewer has to determine to their satisfaction that each required

5:28

part of the report has been completed is materially complete and also that there

5:33

is no interest or position that violates or appears to violate applicable law or

5:40

regulation and those applicable law regulation include title 18 of the

5:46

United States Code the criminal conflict of interest statutes it includes the ethics and Government Act it includes

5:52

the standards of ethical conduct as well as your own agency's regulations so in

**Timely Review**

6:03

conducting these reviews whether they're intermediate or final and then final certification which involves making sure

6:10

that it's technically complete making sure that it complies with applicable law regulation which also involves

6:16

remediating any potential or actual conflicts or other ethics concerns that we find what is the timeframe in which

6:23

we are expected to do that and if you look at section and this is in Section four of the public financial disclosure

6:29

reviewers guide the predicate is basically sixty days

6:34

the initial review specifically has to be conducted within 60 days of receiving the report if you don't require any

6:42

additional information or you don't disclose there's nothing that disclosed that seems to require a remedy then it

6:51

is expected that you will certify that report before the 60 day period expires

6:56

now if you have a situation where you've you've undertaken the review within 60

7:02

days but you're having to get additional information or you're finding that there are some potential conflicts or other

7:09

ethics concerns that need remediation then you can potentially there you can

7:16

extend that beyond the 60 day requirement but I think the good benchmark for you to consider is that

7:23

any time you're going to have to exceed the 60 days because the 60 days really is the predicate you really need to

7:29

document document document you need to have evidence that there's a reason why you weren't able to conduct a complete

7:36

review and certification within 60 days

**SUBSTANTIVE REVIEW**

7:41

now we're going to be talking about the technical review in some degree of detail later on in this session so I

7:49

wanted to start with the substantive review and talk about what the expectations are and the rules are of

7:55

anyone who's going to conduct a substantive review of the public financial disclosure reports now as we

8:02

mentioned before in order to certify that the employee is in compliance with applicable law and regulation as the

8:09

substantive reviewer you are going to have to have familiarity with the criminal statutes 18 USC sections 201

8:15

through 209 with the standards of conduct which are at 5 CFR part 26 35

8:21

and obviously with any of your own agency specific regulations supplemental

8:26

regulations or perhaps prohibited holdings restrictions if any and with

8:32

the view that the review goals are we want to prevent ethics issues conflicts were possible and we certainly want to

8:40

fix them when we find them it's important to know that one of the

8:45

primary authorities that you're going to be doing using as a basis for your substantive review is 18 USC Section 208

8:53

and that is because that's the statute that explicitly addresses financial

8:59

conflicts of interest so how do we identify conflicts a 208 type of

**IDENTIFYING CONFLICTS**

9:06

conflict and we really need two pieces of information in order to do that we

9:11

need to know the duties of the position of the employee we need to know generally speaking what types of

9:17

programs and operations are they going to be working on because we're gonna have to ask ourselves is it possible

9:25

that the employees participation in certain kinds of agency work would

9:30

involve or affect any of the interests that they've disclosed on their public financials closure report

9:36

similarly when we're looking at the interest when we're looking at what they've actually disclosed on the forum

9:42

we should be looking at it through the lens and asking the question could any of these interests that I'm seeing

9:48

disclosed here on this form be affected by agency programs and are those than

9:54

agency programs that this filer is likely to be participating in and then

10:00

of course if you have any prohibited holdings restrictions for your agency you're going to want to make sure that

10:05

nothing that's disclosed on the form would appear to fall within the ambit of those prohibited holdings restrictions

10:12

now to aid and abet your substance I've reviewed there are some agency resources that you really should have on hand

10:19

you're gonna have to have a description or at least some basic knowledge of the filers duties and that may very well be

10:26

just some general idea of the program area in which they are positioned and

10:32

what the nature of those types of programs and operations are that the filer would likely be participating in

10:38

if you're dealing with an annual report you're gonna want to look at the filers

10:43

prior reports and any reviewer notes that might be there to aid you in whatever it is that you're looking at in

10:50

the current filing year of course you're gonna want to have access to and an

10:55

understanding of your agency supplemental regulations or any prohibited holdings restrictions and there are some agencies that have

11:03

contractor or grantee or otherwise a prohibited source list which it can also

11:09

be helpful in allowing you to sort of immediately flag things you see on the

11:14

report that you think might might involve a prohibited source for your for your organization for purposes of

**CONFLICTS OF INTEREST**

11:23

conflicts of interest as we talked about in part 2 under the tools section OGE

11:28

has a series of guides that are analyses of various potential conflicts of

11:34

interest for different types of assets and employment and income sources so you

11:42

will want to avail yourself of this particular resource when you're doing

11:47

your own complex analysis but in addition to 18 USC Section 208 there are

**OTHER COMMON ETHICS ISSUES**

11:54

other common ethics issues that you're also going to be asked to issue spot and to resolve if you find them there are

12:02

potential impartiality and misuse of position types of issues use of public office for private gain types of issues

12:08

that can arise with respect to the filers current outside employment or

12:15

former non federal employment certainly the spouses non federal employment

12:21

employer and any employment interests that the spouse has can raise issues of impartiality or misuse of position and

12:29

any business interests partnerships or other types of affiliations of that nature that the

12:35

filer might have in addition if your filer indicates that they are involved

12:41

in outside positions or outside activities if you have a prior approval process that's certainly going to be

12:48

something you're going to want to make sure that they have materially complied with but even if you don't have a prior

12:53

approval requirement you're going to want to make sure that anything that they're engaged in that is along the

12:59

lines of teaching speaking or writing is in control with 26:35 point 807 that that you

13:07

counsel them on their use of title position and information and that we

13:12

want to make sure that they're not engaging in any representational services or advocacy which could

13:18

implicate other criminal conflict of interest concerns we also have to have

13:26

at the ready an understanding and a willingness to implement a full array of

13:33

remedies for when we do find a potential

13:38

or an actual conflict of interest or other ethics concern so when it comes to

13:43

something where the duties could implicate some of the financial holdings

13:49

that the employee has we want to be able to meaningfully discuss with the

13:54

employee the possibility of recusal which is to say that the employee would

14:00

have to disqualify themselves from certain from participating in certain kinds of matters either completely or

14:07

unless or until another remedy is applied with respect to interests that

14:12

you see remedies that can apply to certain interests that you see on the form there are exemptions from the

14:19

criminal conflict of interest statutes which are located in part 26 40 of 5 CFR

14:24

you should become familiar with those exemptions because exceptions do apply automatically divestiture is also a

14:33

remedy for particular types of holdings that are amenable to divestiture so you

14:39

want to be aware of that as a remedy for any potential conflict that you might

14:44

uncover and certainly resignation as a remedy for outside positions that might

14:50

present material conflicts with the employees duties now to assist you in in

**Substantive Training Resources**

14:58

your in training yourself up on substantive review we have included a

15:03

playlist with the materials that are included with all of these videos on the

15:09

ieg website which are resources for you to conduct

15:14

sort of a self study or a self-directed professional development and to assist

15:22

you in conducting the substantive legal review of a 278 II and of course the

**IEG Resource Library**

15:30

Institute for ethics and government has a resource library that has even more resources in addition to what's on that

15:37

playlist that can assist you with both the substantive and technical aspects of conducting a public financial disclosure

15:44

review so your technical review is going

15:51

to be with a view to making sure that the filer is materially complying with

15:56

the disclosure requirements of 25 CFR part 26 34 which are the financial

16:01

disclosure regulations and section 2 of the guide deals explicitly with the

16:08

different parts of the form 278 II and

16:14

the guide are basically a comprehensive set of instructions both for the filer

16:20

on how to file and for you as the reviewer to know what it is that they

16:27

should be reporting but even more so for you to be able to have a better

16:32

understanding of the nature of the things that people will be disclosing

16:37

because that is going to aid and abet your substantive review so these are all

16:44

written in the form of instructions and these instructions are indeed for everyone because they will serve your

16:52

function as well as serving the function of assisting employees and filers and

16:58

filling out their forms so the public financial disclosure guide has a section

17:05

which is written directed to and for filers which is demarcated here on the

17:12

left-hand side of the screen for you the tab exists at the bottom for

17:17

Ethics officials and when you open that up you're gonna see that those reside next to one another and particularly for

17:25

purposes of the review of the 278 E and the two 78 t it is important to have

17:32

those parallel sets of instructions up there because while they you might think

17:39

they on first blush appear redundant of one another they actually are not they

17:45

are quite complementary the information that's available there for Ethics officials is is is not redundant of

17:54

what's there for employees and I'm going to show you what I mean by that in a minute so these are thus this is section

**SECTION 2— The 278e**

18:02

two this is dealing with the 278 E and we're gonna start by talking sort of

**Whose Information To Report**

18:08

generally about how to approach the information that's on the report in a

18:13

way that can make it comprehensible and so that you know what to expect when a

18:20

when when you're asked to review a report and I think one of the things that you need to be thinking about is

18:26

how the each of the parts are structured while generally speaking information

18:34

that's required to be reported is for that of the filer as well as the spouse and dependent children it's important to

18:42

know that sections one two three and four you're only going to see information for the filer

18:48

when you're looking at those sections you're going to be you're going to be looking at information that applies only

18:53

to the filer so that's any file loose outside positions any employment assets

18:58

and income that they have any employment agreements and arrangements that they have and any sources of non-governmental

19:06

compensation that's all for the filer once you get into sections 5 6 7 8 and 9

19:12

you're gonna start seeing information that may also include information about the spouse and dependent children

19:18

section 5 is for the spouse only that spouses employment as it's an income section 6 other assets and income that's

19:26

going to be filer spouse or dependent children same thing with seven for transactions eight for

19:31

liabilities and nine for gifts and travel reimbursements those all could have information that pertains to both

19:38

the filer the spouse and any dependent children in the section that discusses

**Spouses and Dependent Children**

19:46

spouses and dependent children it it it outlines exactly what I just said to you here that these are the parts of the

19:52

form where you can expect to see or potentially expect to see information about the spouses and dependent children this section is also going to provide

19:59

you with definitions for what's a spouse what is a dependent child as opposed to

20:05

remind your child when does a dependent child cease to be a dependent child and when and under what circumstances does

20:12

the sort of marital dissolution results that you no longer have to report an F

20:17

finally doesn't have to report the spouses Holdings any longer now I want

20:25

you to that we're going to be talking a little bit how the guide is structured with respect to the type of information

20:30

that is supplied for you the ethics official under the ethics official tab

20:36

and I'm going to call that the ethics official view as opposed to the information that's being provided for

20:41

each part of the form under the filers view so the structure of the guide is

**STRUCTURE OF THE GUIDE**

20:49

this as I said before the ethics officials

20:55

instructions which I have here on the right hand side basically are written

21:00

directions when you look at any part of the form on under the guide you're gonna

21:08

see the same thing under the ethics official instructions you're gonna see written directions that address what to

21:14

report how to report what is not reportable whether there's nothing to

21:19

report how you do that and then some of them contain notes that are specifically for reviewers only under the filers

21:28

instructions which you're also going to want to consult when you're doing your reviews that end and also if you've

21:35

obviously filers have questions parts 1 4 7 8 & 9 are structured accordingly

21:44

they have tables with illustrative examples of correct reporting and then

21:51

they also have a length to to a frequently asked questions separate page

21:56

that comes up in connection with the types of information that's required to be reported on those parts parts two

22:04

three five and six look different when you pull them up rather than immediately

22:10

seeing a table with illustrative examples and immediately seeing a link to frequently asked questions what

22:16

you're gonna see is basically a list an index of assets and sources of income

22:22

with links to pages that have the more

22:28

expansive instruction and frequently asked questions

**Ethics Official View 2.04: Part 1. Fler's Positions Hold Outside United States**

22:34

and I'm gonna show you this so that you

22:39

understand what I'm saying and why it's important so here we go in part one of

22:45

the 278 e which requires filers to list the positions that they held outside of

22:52

the United States government as you can see here as I said before these are the

22:58

filing instructions that you're gonna have the written directions you're gonna have here are what to report how to report what's not reportable nothing to

23:04

report and if there are any notes for reviewers what I also want you to note and you're

23:10

gonna see this peppered throughout the guide and it's really important to take note of it and take advantage of it

23:16

you're going to see highlighted hyperlinks that if you click on them are

23:22

going to take you to a separate window and provide you with a specific description of the thing that has been

23:28

highlighted so here we have for example reporting period as you may or may not

23:33

be aware each part of the form has a different reporting period and that can

23:40

vary depending upon the kind of report that it is so we've got a lot of moving parts here so here you're gonna want to

23:47

you're going to want to tag this reporting period for part 1 and if you

23:52

do it'll take you to a separate screen that tells you precisely what the

23:58

reporting periods for part 1 are for each of the types of reports that you might ostensibly be reviewing now

24:05

likewise I had highlighted another term that was on that page which is for

24:11

political entities that if you hold a position with a political entity that's not something that needs to be reported

24:16

when you click on that hyperlink it brings you up to a page which explains to you okay what constitutes a political

24:22

entity for purposes of this filing requirement so now if we that was for

24:29

the ethics official view now if we go over to part one the filers view you'll see what I was referring to before which

24:36

is here we have a table that has illustrative examples of how like how

24:43

the employee actually should what it should look like if they were reporting things correctly and in

24:49

addition to that if you go to the bottom of that page you'll see there's a hyperlink to frequently asked questions

24:57

document which if you click on that will take you to a separate window where it you can see there are actual questions

25:04

that deal with common common questions that employees have and that reflects

25:10

some policy decisions obviously that og has already made about some of these common events so for example I'm on the

25:17

board of directors of my homeowner's association that's a common question what's the answer to that question I'm a

25:22

member of an advisory board committee is that something that would have to be reported as an outside position and the

25:29

answer is provided so these have as much to do with your review of the form and

25:34

you're becoming familiar with what is or isn't required to be reported on the form as it is an assistance to the filer

25:44

same thing with part for structured the same way you have par for the filer sources of compensation exceeding $5,000

25:52

in a year now what I wanted to you're going to see the same things here what to report how to report what isn't

25:58

reportable what I want to highlight from this page is note that we indicate right

26:04

up in the title who has to fill this part out so that you know immediately

26:10

okay this isn't anything for an annual filer so part four doesn't have to be filled out by an annual filer we're

26:19

termination filing and on the filers view it's similar to what we said before

26:24

they also get the notification that unless you're a nominee or a new entrant you don't have to fill this out that if

26:31

you are table with illustrative examples some frequently asked questions document

26:40

and these are the frequently asked questions for for part four for part

26:49

seven transactions the structure is the same what I want to highlight here for

26:55

you is because there are transaction requirements for annual and termination

27:01

reports which are distinguishable from the transaction requirements of the

27:07

periodic transaction reports or the OGE form 278 T's it's important that you can

27:16

see that even within discussions of transactions for purposes of annual and

27:22

termination reports we also have directions for reviewers about what the

27:27

relationship is between these types of transactions and the transactions that

27:33

occur in a periodic transaction report now in section 3 of the guide it does

27:40

discuss explicitly the requirements that for the OGE form 278 t but I think it's

27:47

interesting to note and it's important for you to know that those differences

27:52

distinct distinctions are discussed within the instructions for transactions

27:57

for annual and termination reports as well similarly when you go to the filers

28:03

view and you pull up the frequently asked questions the first two questions effectively discuss that distinction

28:12

between the periodic transaction report or the relationship between the periodic transaction report and the annual and

28:18

termination reports so I reported a purchase on my PTR do I have to report

28:25

the transaction again in my annual report are the transaction reporting requirements for annual or termination

28:30

the same as for my periodic transaction report so if you yourself aren't

28:36

sufficiently comfortable with the distinctions this frequently asked question document can help you inform

28:43

your own understand of those distinctions and as I said before there's a separate frequently

**FAQS for Form 278-T**

28:48

asked questions document for specifically addressing the form 270 84

28:58

part 8 liabilities mm-hmm this is the same for ethically and the

29:05

ethics officials view as for other parts what I want to highlight for you under

29:10

the filers view I mean obviously we have the table with the lustre ative examples but what we also have here are a whole

29:17

series of highlighted linked common

29:22

types of reportable liabilities that you can click on and your you'll be given a

29:27

separate page with some discussion of these discrete types of reportable

29:33

liabilities so boat loans capital commitments credit card debt exercise

29:38

lines of credit margin accounts so again there's a lot more information here than

29:44

like meets the eye at first glance take full advantage of all of these hyperlinks that have all of this

29:51

wonderful information that can help you know not only what has to be disclosed but will help you understand what the

29:57

nature of those things are that that are being required to be disclosed and again

30:04

they're a frequently asked questions document for part 8

30:15

part nine is similar this is for gifts and travel reimbursements again it

30:23

indicates it's only for annual termination filers they have because the

30:28

filing requirements for gifts and travel reimbursements has two different and

30:34

interrelated dollar thresholds that have to be calculated in order to determine if something is reportable I've

30:41

highlighted here that we do offer some concrete you know examples to

30:49

demonstrate sort of the math that's involved in in reporting for gifts and

30:55

travel reimbursements so that's the piece I wanted to highlight for you here on the ethics official view and then of

**Part 9: Filer's View**

31:01

course under the filers view it's it's what we've said before which is the table with some demonstrated examples of

31:09

how to report and then a frequently asked questions document with respect to

31:14

gifts and travel reimbursements so now with part two as with part three part 5

31:23

and part six we're gonna see a different set of screens particularly when we get

31:29

into the filers view this is the filers

31:36

employment assets and income and retirement accounts is on part two of the 278 e so here we're trying to

31:45

discover the variety of ways that a filers outside employment could have

31:51

provided could provide or have provided certain types of employment related assets and income which are

31:58

distinguishable from general assets and income so if you look on the filers view

32:04

this is what I was telling you on the filers view what you're gonna see is a list and it is a rather extensive list

32:11

of types of assets and sources of income that are employment related assets and

32:18

income now I've just chosen one here for purposes of illustration and so I've

32:24

pulled up deferred compensation when you click on that then what it's going to do is it's going to bring you

32:29

up to a new page with a much more comprehensive discussion of what constitutes deferred compensation and as

32:36

you'll see in these boxes not only do you get a description of sort of like

32:42

what deferred compensation is generally but there are five extensive examples

32:49

distinct examples of things that constitute deferred compensation and

32:57

then when you get to the end of the fifth example in this filers view you'll

33:04

also find a frequently asked questions document that's related to specifically deferred compensation part three is

33:14

structured the same and this is profilers employment agreements and arrangements so what are we talking

33:20

about here okay so here we're talking about things like agreements or arrangements for future employment for a

33:25

leave of absence for continuing payments from a prior employer for continued

33:31

participation and employee benefit plan that sort of type of interest is what

33:37

one would expect to see on this form and so similarly when you go to the filers view you're going to be seeing precisely

33:44

a litany of those kinds of employment agreements or Arrangements that one could reasonably expect to be reportable

33:51

on a 278 part 5 this is for the spouse

33:58

so here we have the spouses employment assets and income and retirement accounts which is kind of like the

34:04

equivalent of the filers part two so here the employees spouse is going to be

34:10

listing any of the employment related assets and income and retirement counts

34:15

that they have again we have the very long list of those types of related

34:21

assets and income part six is other assets in income now this is

34:30

distinguishable from the employment related ones so you can imagine that the

34:36

list that we're about to see you on the filers view is going to be rather extraordinary and it is and we see there

34:48

is some sort of exotic I hear things that we wouldn't typically expect to see

34:53

or wouldn't necessarily know much about American Depositary Receipts and and the

34:59

like this again is a beautiful resource for you to be to familiarize yourself

35:07

with the kinds of things that you might expect to see on a form before you

35:12

actually see them on a form so if you want to use these indices as a way to

35:17

get yourself up to speed on the kinds of things that you might reasonably expect to see on the form again before you're

35:24

set to the task of actually reviewing it might be worth your while to do I have

35:30

chosen a rather pedestrian by example to show you what that looks like when you

35:35

click on it and pull it up I chose exchange-traded funds and as you can see

35:42

on here there are frequently asked questions that are associated with that that you could click on that would then

35:47

go to another page that would talk specifically about exchange-traded funds but we also have a hyperlink to the word

35:55

exchange-traded funds so if you click on that it'll take you to a page that will explain to you what an exchange-traded

36:02

fund is now again it's important to know for your purposes how the employees

36:09

should be reporting this to make sure that they're materially compliant but more importantly you really have to

36:15

become familiar with the nature of these types of holdings and that's where this

36:21

information becomes really important for your substantive review because the more

36:26

you understand operationally what these things are and how they need to be reported is going to help inform your

36:33

understanding about the extent to which these these types of holdings could

36:39

that a potential conflict of interest or other ethics concern for your employee

36:46

now there are a few additional aspects in Section four

36:52

that are kind of directly related to your review and certification of the report the first one is where to obtain

37:02

our window tane additional information now this has your sort of general

37:08

standard of scrutiny like when when do you have enough and when do you need more well in order to know that you need

37:15

to know what the standard of scrutiny is and what you have to have materially established constitutes completeness of

37:24

the report but I think there's the piece

37:29

that I want to alert you to under that section are these additional considerations because what Oh G has

37:36

tried to do for your you here is to point out specifically some policy decisions that we've made about things

37:45

you should do - - that maybe some flexibilities that you can exercise when

37:52

you're engaging in your review of your forms particularly your technical review so for example we say for purposes of

37:58

all Oh G form - 70-80 reports agencies are not expected to be rigid and

38:03

distinguishing employment assets and income from other assets and income so

38:08

parts - and parts v which are supposed to be employment related assets an income we're saying that in many

38:17

circumstances you can you can have flexibility if some of those things get reported under other assets and income

38:22

rather than under employment assets and income so that's a nice thing to know that that's a flexibility you have under

38:29

new entrant and nominee reports we're giving you a perspective on how you

38:34

should approach a new entrant or a nominee report which is to say that it's a story of the person's finances so you

38:41

should look for obvious gaps in that story such as long-term employment with no retirement plan or a new entrant with

38:48

significant stock holdings and no employment so if what you're seeing when the forum doesn't seem to make sense because it

38:54

doesn't seem to read like a story and there seem to be missing parts that's sort of philosophically a way to

39:00

approach or methodologically a way to approach a report that can that can help you sort of figure out when and under

39:07

what circumstance you should be concerned about what you're seeing or not seeing on a filers report

39:13

similarly on annual reports we say

39:18

explicitly you're not required to perform a line by line comparison between the filers current and the

39:24

report and the filers most recent prior report what we're looking for our apparent inconsistencies or some

39:31

significant changes similarly under termination reports we we say the same

39:37

thing about termination reports as we did with annuals but additionally we say you know it's a termination report this

39:43

person is leaving government service you know getting in contact with them because of something that you think is missing is probably not going to be easy

39:49

so it may not be reasonable to seek additional information with respect to

39:54

just reporting issues if they're not issues that would affect the conflict of

39:59

interest analysis and we also talked about over reporting so these are just I

40:05

think additional points of guidance for you that you may want to take a good

40:11

look at particularly if you're brand new to review and certification we also

40:18

talked about amending reports and annotating reports you are going to have circumstances where you know either the

40:27

filers gonna have to make those changes or you're going to have to initiate those changes what this section talks

40:34

about is how do you do that when you haven't done final certification yet so

40:40

what are the requirements to do it for that how do you do it after you've done the final certification at the agency

40:47

level and then for those that you send a GE how do you how do you engage in

40:52

report amendments and annotations after OGE has certified the report

40:59

and finally we talk in this section about supporting notes now supporting

41:05

notes are all this reviewer notes that you may have taken in the course of doing your review that you're gonna want

41:10

to keep for the benefit of the next person who comes down the line who has to review the next report and this

41:17

discuss is how you keep them where you keep them whether in to what extent they

41:22

are part of the report whether in to what extent any of them are publicly available so the supporting notes

41:30

section is another section where you may want to be mindful of how you should be

41:35

treating any of the reviewer notes that you are taking while you are in the conduct of your review so to recap the

41:46

goals of our review and certification are to prevent ethics issues to prevent

41:53

conflicts and potential conflicts where possible and to fix any problems we find

41:59

when we find them to do that you have to engage in a very thorough and robust

42:06

technical review to make sure the imply the employee is materially complying with the regulatory requirements the

42:14

statutory requirements of disclosure but we also need to do a robust substantive

42:20

review in order to be able to determine whether anything we're seeing when the form presents a conflict or a potential

42:25

conflict with the employees duties certification is doing just that you

**What Is Certification?**

42:33

have to determine to your satisfaction that each required part of the form is

42:40

complete and that no interest or position disclosed violates or appears

42:45

to violate applicable law or regulation we all have different roles to play in

42:52

this process I hope that this series has helped you understand better what that

42:58

role is and that we've provided you with the tools to make sure that you can play

43:04

your part to the best of your ability thank you

hello and welcome to public financial

0:05

disclosure review this is a massive open

0:06

online course for folks who are new to

0:09

the review of public financial

0:11

disclosure reports

0:12

I'm Patrick Sheppard so welcome to part

0:14

one of our massive open online course

0:16

today what we're going to do is go

0:19

through an exercise we're not going to

0:21

actually conduct the review but we're

0:22

gonna talk about the parts of the report

0:24

and the resources you need to conduct

0:25

the review and then we'll give you a

0:27

chance between parts 1 & 2 to look at

0:30

the report yourself to practice using

0:33

the resources to see if you can come up

0:35

with a list of questions and concerns

0:36

for our fictional filer

0:39

so this is just an introduction to that

0:42

first exercise to walk you through what

0:43

you're going to be looking at and the

0:45

resources available to you we hope

0:47

you're all doing well and staying safe

0:49

as we manage in this difficult time so

0:56

what are we doing when we are reviewing

0:59

public financial disclosure reports well

1:02

really what we're trying to figure out

1:03

is if the report reveals any financial

1:08

holdings or outside positions that are

1:12

likely to pose a potential conflict of

1:14

interest and what we mean by conflict of

1:17

interest really is a nexus between an

1:20

employee's official government

1:21

responsibilities and the financial

1:24

holdings disclosed on their report so

1:26

this is the most important part of

1:29

public financial disclosure review is

1:31

this substantive analysis to make sure

1:34

that we're uncovering and taking steps

1:36

to prevent potential conflicts of

1:38

interest so as you go through the report

1:41

I think it's important to keep this in

1:42

mind that that's the ultimate objective

1:44

is to identify and prevent potential

1:48

conflicts of interest but because this

1:51

is a public financial disclosure system

1:52

we also have some considerations about

1:55

complete reporting the Congress has

1:57

decided through the vehicle of the

1:59

ethics and Government Act and subsequent

2:00

legislation that the public should be

2:03

able to know the holdings of the senior

2:05

government officials who file 278 EES or

2:08

public financial disclosure reports so

2:11

we have a second obligation as ethics

2:13

officials to

2:13

sure that these public financial

2:15

disclosure reports are complete and that

2:18

they contain all of the information

2:20

required by the ethics and Government

2:22

Act so what we have here is some

2:24

questions to help guide your review and

2:26

if you keep these in mind as you work

2:28

through the report they're gonna help

2:30

you get 80 90 percent of the way there

2:32

and then we can rely on the resources to

2:35

fill in the gaps to sort of help us with

2:37

the tough calls

2:38

so our first set of questions deal with

2:40

the potential for conflicts of interest

2:42

and the first question I like to to

2:45

emphasize and if you keep this in mind

2:46

you will be well served is do you have

2:49

enough information to determine for

2:52

every single entry whether that entry

2:55

poses a potential for conflict or

2:57

definitely will not pose a potential cut

2:59

for conflict of interest so if you're

3:03

not able to make one of those two

3:04

determinations about an entry it's

3:06

because you need more information either

3:08

you need to know more about the

3:09

financial holding or you need to know

3:12

more about the duties and

3:13

responsibilities of the filer so this is

3:15

the first question that should animate

3:17

your review is are you able to determine

3:19

affirmative lis for every single entry

3:21

that either this will not pose a

3:23

conflict of interest or it potentially

3:26

can and we need to take steps at

3:27

remediation so that's our second

3:30

question is have we taken steps to

3:32

manage the potential conflicts posed by

3:34

an entry so if you happen upon an entry

3:36

you say hey you know there's an entry it

3:39

looks like there's a nexus with the

3:41

official duties it looks like there's a

3:43

potential for conflicts of interest the

3:44

next question you want to ask is has our

3:46

agency already taken steps to mitigate

3:48

that potential conflict of interest and

3:51

typically this would be in the form of

3:53

an agreement to recuse or not to

3:55

participate in potentially conflicting

3:56

matters and a resource you could look to

3:59

to see if that's been taken care of is

4:01

in the case of a senate-confirmed

4:03

presidential appointee reading their

4:05

ethics agreement the ethics agreement is

4:07

very very important in the review of

4:08

those reports and you want to make sure

4:10

that the report reflects compliance with

4:12

that agreement but the agreement may

4:15

include some remedial information some

4:18

information about the steps that have

4:19

already been taken to mitigate potential

4:21

conflicts that may appear on the report

4:23

so you want to look at those things in

4:24

concert for your officials who are not

4:26

Seneca

4:27

from presidential appointees who filed

4:29

to seventy-eights there may be a

4:30

guidance document and email string a

4:33

letter to the file or a screening

4:35

arrangement implementing recusal

4:37

obligation so you'll want to look at

4:39

those documents in the course of the

4:40

review to see where it looks like there

4:43

might be a conflict if it's already been

4:44

taken care of and I think this is

4:46

especially important when we're talking

4:47

about the annual reports when we're

4:50

talking about completeness which is to

4:52

say when we're thinking about whether or

4:54

not these reports contain all the

4:56

information required by the ethics and

4:58

Government Act one thing I like to think

5:00

about is does the report tell a coherent

5:01

story does it seem like there are pieces

5:04

of pieces missing you know for example

5:06

maybe of an outside position but there's

5:07

no retirement associated or there's an

5:10

active retirement plan but no outside

5:12

position or the spouse has a job that

5:14

looks like it should include incentive

5:16

stock options or equity sharing but

5:19

those things don't appear on the report

5:21

so if the story doesn't quite make sense

5:23

you want to follow up so that you can

5:25

figure out what's actually going on I

5:27

think that one of the big skills that

5:29

you develop over time as a reviewer is

5:31

being able to see what's not on the

5:33

report to infer what's probably missing

5:35

from the report so that we can help our

5:37

filers completely as accurately as

5:39

possible another thing we want to think

5:42

about is does the guide the financial

5:45

disclosure guy discuss the entry because

5:47

that's where we're gonna find out about

5:49

what is required what information is

5:51

required and whether or not that entry

5:52

is actually required to be on the form

5:54

and if we determine that the the thing

5:58

being disclosed he's in the guide we

5:59

want to review that material to make

6:01

sure that the entry is complete I think

6:04

finally this is sort of the the Telos

6:06

this is the purpose of the public

6:08

financial disclosure report for the

6:10

public is could a member of the public

6:11

understand the report does this tell a

6:14

coherent story that makes sense is the

6:15

information complete enough that someone

6:17

could understand it and if the answer to

6:20

that question is yes it's it's likely

6:22

that you have the right amount of

6:24

information so you want to think about

6:25

these three questions in concert when

6:28

you are considering whether a report is

6:30

complete so I mentioned the guide here's

6:34

just a screenshot of the ethics official

6:36

section of the guide I use both say for

6:39

Ethics official section as well as

6:40

for filer section I'll be honest with

6:43

you the reason I like the for filer

6:44

section is because it has pictures and

6:46

the pictures help to sort of see what a

6:48

complete entry looks like so we'll be

6:50

oscillating between these and as you go

6:52

through the exercise I'd encourage you

6:54

to make liberal use of the guide you

6:57

know maybe even for every single entry

6:59

go and look it up see what information

7:01

ought to be reported also when we're

7:04

talking about the laws and regulations

7:06

when we certify a report we certify that

7:08

the filer is in compliance with all

7:10

applicable laws and regulations and by

7:12

that we mean pretty much all of the we

7:14

do we mean all of the ethics rules but

7:17

there are some that we're gonna rely on

7:18

and go back to again and again and again

7:20

and here are a few of those so 5 CFR

7:23

2634 is where you'll find the

7:26

regulations and definitions for the

7:28

disclosure portion of public financial

7:30

disclosure so if you're trying to figure

7:32

out if something is sufficiently

7:34

disclosed and you can't figure it out

7:36

through the guide or the guides unclear

7:38

you're not certain go to 2634 because

7:40

that's where you gonna find the

7:41

definitions and the requirements for

7:45

reporting the timelines the information

7:47

about extensions filing definitions time

7:49

periods all that sort of stuff

7:51

and then we're talking about the rules

7:54

that might be implicated that we the

7:57

sort of things that we're trying to help

7:59

prevent violations of with the public

8:01

financial disclosure report we want to

8:04

think about all of the standards of

8:05

conduct so at various port parts in the

8:07

forum we're gonna think about gifts

8:09

we're gonna think about impartiality

8:11

we're gonna think about misuse of

8:13

position we're gonna think about

8:15

conflicts of interest we're gonna think

8:17

about outside writing teaching and

8:19

speaking so a lot of the standards are

8:21

going to be implicated depending on what

8:23

we see on their form so we want to keep

8:25

that in mind as we go through our review

8:28

these are public filers so so we also

8:31

want to keep in mind 5 CFR 26 36 which

8:34

is the limitations on outside earned

8:38

income for certain non-career employees

8:40

so our non career officials often file

8:43

278 so we want to remember this one it's

8:46

an easy one to forget and finally we

8:48

want to look at the implementing

8:50

regulation for 18 USC Section 208 which

8:53

we find at 5 CFR

8:54

26:40 and again 208 is our sort of

8:57

granddaddy of the conflict of interest

8:59

laws in that you know it is the the law

9:03

that deals with financial conflicts of

9:05

interest so that's the primary law we're

9:07

thinking about and that's implemented in

9:09

regulation at 5 CFR 2640 and that's

9:12

where you'll find the necessary

9:13

definitions I will also of course want

9:15

to think about the cross-referenced

9:17

other conflict of interest statutes as

9:20

we go through our review so where we

9:21

have outside activities we want to think

9:23

about sections 2 or 3 into a 5 if we're

9:26

receiving outside income we want to

9:28

think about 18 USC section 209 so we

9:31

want to keep all of the rules in mind

9:32

because we will be certifying that

9:34

someone is in compliance with all

9:35

applicable laws and regulations so

9:41

here's the the first page of the report

9:42

and you have a PDF copy of this

9:44

available so that you can go through it

9:46

I have some information about our filer

9:48

and when we're talking about those two

9:50

pieces of information we're talking

9:52

about the duties of the position and the

9:54

assets that are disclosed and in this

9:56

case I've completed this report using

9:59

our integrity training platform as an

10:02

exercise report and I'm the CIO here at

10:06

OU GE and we selected the CIO position

10:08

because it's likely the your agency also

10:10

has a chief information officer so you

10:12

may be familiar with the duties of the

10:14

position so our review is going to be

10:16

distinct to the duties and

10:17

responsibilities of the CIO position if

10:20

this filer were in some other kind of

10:22

position we would want to balance we

10:27

would ought to look for a nexus between

10:28

the duties of that position and and the

10:30

reported assets so the things we see

10:32

here may pose a conflict for the CIO

10:34

that may be just fine for say your

10:36

agency's chief of staff or chief human

10:39

resources officer so we really want to

10:41

make sure that we understand the duties

10:43

and responsibilities of the position

10:44

before we start our review so I just

10:49

want to walk through the report we're

10:50

not actually gonna analyze these but I

10:51

just want to sort of show you what's on

10:53

this report so you know where to look

10:55

when you start conducting your review so

10:58

the first thing we have is the filers

11:00

outside positions and it looks like he

11:02

has two positions here one looks like it

11:04

may be within mom profit and the other

11:06

looks like it's with a corporation

11:08

so you want to take these one at a time

11:09

and do an analysis first potential for

11:12

conflict second do we have enough

11:13

information reported so that we're

11:15

compliant with the Ethics in Government

11:16

Act and where we might start here is

11:20

looking at the guide for positions held

11:22

outside the United States government

11:24

it'll give us some information about

11:26

complete reporting and then we can use

11:28

the laws and regulations to think about

11:30

whether there's a potential for conflict

11:31

or if we're going to need to do some

11:33

counseling or recommend some remedial

11:35

actions the next part of our exercise we

11:38

have employment assets in income and

11:40

retirement accounts so we have a number

11:43

of things disclosed here and I think

11:45

what we want to do is take each of these

11:46

in turn ask that first question which is

11:49

do we have enough information to

11:51

determine affirmative lis that this

11:54

either is a potential conflict and we

11:55

need to take steps or that it definitely

11:58

will not pose a potential conflict of

11:59

interest and if we can't answer that to

12:01

find out what additional information we

12:03

need and then to also ask those

12:05

questions about the completeness of the

12:07

reporting does this tell a coherent

12:09

story could a member of the public

12:11

understand it and it doesn't contain all

12:13

of the information that's required per

12:15

the guide so again I'd recommend you

12:17

look through each of these one at a time

12:18

and where you have questions where you

12:20

want more information make a note of

12:22

those things and again here on a picture

12:26

of this place in the guide where you can

12:27

make use of and and take a look at each

12:30

of those categories in our next section

12:34

we have the filers employment agreements

12:37

and arrangements so this is where we

12:39

would see things like our arrangements

12:42

or agreements for future employment or

12:44

retirement accounts from previous

12:46

non-federal jobs and again so we we have

12:49

entries here we want to take a look at

12:51

it and see if there's a potential for

12:52

conflict and then also see if we have

12:54

enough information and we do have a

12:56

section of the guide that can help us

12:58

with that section for the the filer has

13:03

not disclosed any compensation in excess

13:07

of $5,000 in a year this is a place

13:09

where if you don't see anything you want

13:10

to fall back on this question of does

13:12

this report tell a coherent story is it

13:14

possible that a filer has forgotten to

13:17

report something and if we think that's

13:19

possible what is the question we need to

13:21

draft

13:22

and ask the filer to make sure that we

13:24

can confirm either the the report is

13:26

complete or that something else needs to

13:28

be reported and again we have a section

13:30

of the guide that can help us think that

13:32

through both the kinds of reports and

13:34

the kinds of information that we'll need

13:35

if there's an error next we come to the

13:40

spouses employment assets and income and

13:42

retirement accounts and again here we

13:44

want to see do we have enough

13:46

information to determine that yes this

13:47

is a potential conflict or no it

13:49

definitely isn't and if we can't answer

13:51

that question what additional

13:52

information do we need and we also want

13:55

to ask those three questions about the

13:56

completeness is it covered in the guide

13:58

does it look like the entries in the

14:00

guide does it tell a coherent story or

14:02

does it look like there's information

14:03

missing and could someone who's looking

14:06

at this as a member of the public follow

14:07

the follow the report and again we do

14:11

have a section in the guide and I'd

14:12

encourage you to make liberal use of

14:14

this and where you see something that

14:16

doesn't appear here you can always look

14:18

back to the regulation to see if it's

14:21

discussed elsewhere that would be at 5

14:23

CFR 26 34 we also have other assets an

14:27

income so this is sort of it everything

14:30

else things that aren't affiliated with

14:32

non-federal employments aren't

14:34

retirement accounts so this would just

14:35

be like you know things you might hold

14:37

in a brokerage account and we'll treat

14:39

this very similar to the other assets

14:40

and income section where we're looking

14:43

to see do we have enough information to

14:44

determine that this will or won't pose a

14:46

potential for conflict and is it

14:49

complete and accurate for those three

14:51

questions and again we do have a section

14:54

in the guide that can help us think

14:56

about the various things that are

14:57

disclosed and it can also help us

14:59

formulate better questions for our

15:01

filers so that we have fewer

15:03

back-and-forth we're getting more of the

15:05

information we need back in the first

15:07

round of questions rather than going

15:09

backwards and forwards we also have

15:12

transactions so this is another part of

15:14

completeness and it can also help us to

15:17

identify potential conflicts early

15:19

because it tells us what's changed since

15:21

last year so this is a good place to

15:23

start if you are pretty confident in the

15:26

quality of the review that took place

15:27

last year to start here and say you know

15:29

what's changed and do those changes pose

15:31

new risk for potential conflicts of

15:33

interest and if they do you need to make

15:35

sure that you're taking steps to to to

15:38

remedy those those challenges so

15:40

encourage you to take a look at this and

15:42

use it as a tool for identification of

15:44

possible conflicts and again we have a

15:47

section of the guide to help you do that

15:49

and to help you sort of see what it

15:52

looks like to be completely and fully

15:55

disclosed we also have a section on

15:58

liabilities a lot of liabilities are

16:01

excluded but if you have something here

16:04

we also have a section of the guide to

16:06

help you think through that when we're

16:08

thinking about liabilities usually we're

16:10

thinking about a gift or a benefit or a

16:15

sort of compensation that may take the

16:18

form of a loan so this is a place where

16:20

you know there's a possibility for

16:21

impartiality or conflict but there's

16:23

also a possibility that we need to think

16:25

about things like 18 USC Section 209 and

16:28

sub Part B of the standards of conduct

16:32

and finally we have the gifts and travel

16:36

reimbursement so there's a duty to

16:38

report gifts we have something reported

16:40

here which will analyze in part two but

16:43

what you want to think about is the

16:44

potential standards of conduct

16:45

implications here hopefully in an ideal

16:49

world in the filers advice file they may

16:53

actually have come to you and sought

16:55

advice before accepting gifts that's an

16:57

ideal case but if you haven't seen these

17:00

before we will need to conduct a gift

17:01

analysis on anything that's reported

17:03

here and again we have we have a section

17:07

of the guide to help us do that so again

17:11

these are the questions to guide your

17:12

review do you have that information you

17:14

need to determine one way or the other

17:15

we have an ethics challenge that we need

17:18

to take steps to remedy or do you not

17:20

have steps already been taken to avoid

17:23

potential conflict and are those still

17:25

being taken or do we need to revise

17:27

those and when we're thinking about the

17:29

completeness of the report does the

17:31

report tell a coherent story does the

17:33

guy discuss the entry does the entry

17:35

look complete according to the guide and

17:37

could a member of the public understand

17:39

the report so I hope you'll take some

17:42

time to look through this report to

17:45

write down some of the questions you

17:46

have

17:47

to identify places where there's a

17:49

potential for conflict of interest and

17:52

think about what steps your employee

17:54

might need to take in order to avoid

17:55

those conflicts of interest and just

17:59

briefly what those steps may be we may

18:02

have an exemption in 5 CFR 2640 if no

18:05

exemption applies our options are

18:07

recusal which means not participating in

18:09

potentially conflicting work divestiture

18:12

which means selling an asset a waiver is

18:16

possible under 18 USC Section 208 if we

18:19

just have an appearance concern we may

18:21

be able to do an authorization under 5

18:23

CFR 26 35 502 but it's important to

18:27

remember that that's only good if we

18:29

don't have a 208 consideration we can't

18:31

fix a potential criminal financial

18:33

conflict of interest with a with an

18:37

appearance waiver under 502 d and in the

18:40

case of outside work that's potentially

18:42

conflicting we may need to use a

18:44

resignation

18:46

so as you complete the exercise I would

18:48

encourage you to think about what

18:50

remedies would be appropriate where you

18:52

find a potential for conflict of

18:53

interest so that's the exercise I hope

18:57

you find it useful to go through the

18:59

exercise to use the tools to think this

19:00

through and in part 2 we're going to go

19:03

through the report and conduct an

19:05

analysis and try and come up with a good

19:07

set of questions for our filers so I

19:09

look forward to seeing you in part 2

welcome back to part two of the public financial disclosure review a massive open online class my name is Patrick

0:08

Shepherd and I'm really pleased to join you today as we debrief our exercise and what we'd like to do today when we

0:15

debrief the exercise is just go through one line at a time and figure out if we have any potential for conflict to think

0:21

about ways that we might resolve those potential conflicts and consider whether

0:26

or not the information that's included on this report is complete and accurate or if there is information that we still

0:33

need so I hope you've had an opportunity to to to go through the form and make

0:40

some notes yourself think about some questions you might want to ask and before we get started I just want to

0:45

remind everyone what it is we're trying to accomplish with the review of a public financial disclosure report the

0:51

first thing we're thinking about here is preventing potential conflicts of interest and that happens when there is

0:57

an overlap or a nexus between the official responsibilities of a government employee in this case our

1:03

filer and the assets and the assets income and positions disclosed on the

1:09

278 e so we're really looking for a nexus between the work they do for the government and the things that they've

1:14

reported so we can think of some questions to help guide our review and those questions are do you have enough

1:21

information to determine that each entry either poses a potential conflict or we're definitely not pose a potential

1:27

conflict so we need to be able to decide for each thing that they've placed on this form that they've reported that we

1:33

can either say not gonna be a problem we don't need to do anything or there's definitely a potential problem here and

1:38

we need to take steps so that's the next question we have to ask answer is you know have we taken all steps necessary

1:44

to avoid potential conflicts of interest because when we go to certify the report we're gonna certify that the employee is

1:51

in compliance with all applicable laws and regulations so when you conduct your

1:56

review it's a good idea to have your compilation of federal ethics laws readily handy as well as your copy of OG

2:04

ease regulations because you'll need to refer to them throughout to make sure that where you identify possible

2:10

problems you have the information you need to to resolve them but one of the laws

2:16

that we have to make sure they're in compliance with is the Ethics in Government Act and the Ethics in Government Act prescribes in quite

2:23

significant detail the precise information that must be disclosed on the 278 and the reason for this is

2:29

because this is a public report ultimately these reports may be requested by the public and inspected so

2:35

that citizens can be certain their government leaders are free from conflicts of interest and the Congress

2:40

has carefully considered what information ought to be reported so in addition to the substantive conflict of

2:46

interest laws and the standards of conduct we need to think about the completeness of the reporting and circle

2:51

questions to help us do that or does the report tell a coherent story does it make sense as a whole you know if we see

2:58

an entry it does that correspond to another entry or does it seem the correspondent is missing so I think

3:03

that's one thing you can consider as we go through is you know does the story this report is telling make sense we

3:09

also want to think about the financial disclosure guide which we talked about in part one it has a lot of information

3:15

about exactly what information must be included in the report so we want to find out if each entry is complete so

3:21

that's another another step another question that can guide our review and finally because these are public reports

3:26

something that can also help us to make sure we have enough information here is I could a member of the public

3:31

understand the report are the things disclosed here do they make sense on the report if if you didn't have special

3:37

special expertise so these are some things to think about as we go through the review so here we have the cover

3:44

page and the cover page is very important because it tells us what our filer does and in this case I've completed this report in the integrity

3:51

training system and I'm pretending to be bujji East chief information officer so

3:58

that can give us some information about the potential conflicts we might we might encounter so things that that involve IT hardware

4:06

software IT services telecommunication services those are the kinds of things

4:12

we're going to want to be looking for as we conduct our conflicts of interest review so that's really important piece

4:17

of information there's a first piece of information we need even before we start the review is an understanding of what

4:23

it is the filer does for the government because there are duties and responsibilities of the governments are

4:28

half of that conflicts of interest equation so let's get into the report so

4:34

we start with the filers positions held outside of the United States government and this is good because we often have

4:40

assets and income that are related to these kinds of positions and by starting here we can start to see the story of

4:46

the public financial disclosure of reports unfold so here our first holding

4:52

is a board member position at a nonprofit called Marina stage so this

4:58

looks like it may be we could google it but it looks like it may be a community

5:04

theater type organization or a theater nonprofit organization and he's a board

5:09

member so that's important information for us to have and the reason for that is as a member of the board of directors

5:17

the financial interests of the marina stage are imputed to our employee because as you are probably aware 18 USC

5:24

Section 208 impedes the financial interests of anyone with whom an employee of serving as officer director

5:30

trustee General Partner or employees so in this case being a member of the Board of Directors if that's indeed what this

5:36

position is I would impute there their financial interest the good news for us about this from the perspective of 18

5:43

USC Section 208 is the nexus between this filers responsibilities as the chief information officer and a

5:51

nonprofit theater organization there probably isn't a nexus so we can likely

5:57

determine that this position doesn't pose a potential financial conflict of interest but section 208 is not the only

6:04

position that we are not the only law or regulation that we need to be concerned about so we might look and see if this

6:11

person's received guidance previously or has completed our prior approval request

6:16

that's been processed and in case they have it may be sufficient to remind them to continue to abide by the guidance

6:22

we've given if you're not familiar with how to conduct an outside activities analysis we do have a massive open

6:28

online course to help you with that but some of the things that we might think about in the context of a review if

6:35

we've not already provided advice we'd want them to go through the full process but some things that come to mind immediately are the possibility of a

6:41

problem under 18 USC Section 205 and this is just a cautionary thing to make sure our employee isn't making

6:48

representations on behalf of the nonprofit organization before the federal government because they could

6:54

inadvertently contravene section 205 maybe also caution them about fundraising in the

6:59

workplace to nonprofits so they're reliant upon fundraising or you know

7:05

charitable donations so we might have cautioning there and again thinking about the prior approval and something

7:10

we might ask about is whether or not this is a compensated position you know typically these kinds of positions and nonprofits aren't but if it's the first

7:16

time we've seen it it's probably worth asking so this is sort of a moderate concern position if we saw this for the

7:23

first time on a report and would probably require us to engage in some advice and counseling activity to make

7:29

sure that our are a filer it doesn't inadvertently get into any difficulties

7:34

the next the next entry is a little more concerning because it looks like it's an

7:42

IT consultant working for a technology corporation and being that our employee

7:47

is the CIO of our organization this may pose us some challenges because there

7:53

may be that nexus between his duties as the chief information officer at the

7:58

office of government ethics and his role as an IT consultant for in attack and

8:04

one of the questions we're going to want to think about is we have a lot of rules that might come into play if an attack

8:10

does business with the federal government we may have concerns that are our filer might make representations on

8:16

behalf of the company and those might be prohibited under sections 203 and 205 of Title 18 208 analysis is going to be a

8:25

little different a little challenging here he says he's a consultant and as you know the financial interest of a

8:31

company are imputed to a filer or an employee if they're serving as officer director trustee general partner

8:38

or employee so the question here is going to be is this person an employee

8:43

of an attack or are they a contractor of an attack because if they're a contractor their financial interest is

8:49

going to be limited to the fees that they receive from an attack if they're actually an employee that

8:55

means that all of in attacks interests are imputed to them so that if they were to take any official action that had I

9:01

had a direct in predictable effect on an attack we could have a potential violation under Section 208 so the scope

9:07

of any recusal is going to be really dependent on that question we also might

9:13

have concerns about about initech supplementing the salary of the employee

9:18

the employee misusing government time or information impartiality concerns if

9:23

they're not an employee and what we really want to see us do we have a prior approval form on record if we looked at

9:29

this before because if not we need to sort of stop everything and go through the whole battery of of advice go

9:37

through all of these issues work them out and see if it's possible for our our filer to maintain this position while

9:42

also working as our CIO and that's gonna have a lot to do with whether or not our agency is currently doing business with

9:48

this firm and we also want to see if they have compensation or other kinds of

9:53

assets related to this position so we'll be keeping that in mind as we go through the rest of the report so I think this

9:59

would be kind of a blinking orange to red light if I saw this for the first time on a CIOs form and I'd want to take

10:06

steps immediately to make sure that we analyze all the potential issues get them all the advice they need and if

10:12

necessary think about having them resigned from this position if it's impossible for them to do their government job while avoiding conflicts

10:18

with this outside position

10:25

so here we we have some more information on part 2 as we turn the page and look

10:30

at this next section our filer reports consulting fees in the amount of $22,000 so that seems to

10:38

suggest a contracting type role but again that's something we're really gonna want to think about as we do this

10:43

analysis because it's possible that they could be an IT consultant in in the sense that initech has clients and he is

10:50

a consultant for those clients so we're gonna think about the possibility of clients but also that he might be an

10:56

employee in which case in a techs interest will all be imputed to our filer and we have all the same concerns

11:02

that we had when we looked at it in part one we just have a little clearer picture of the Defiler situation so we

11:11

have any indicia that there's an IRA an individual require a retirement account here is indicated it belongs to his

11:18

spouse I think technically they should go in in another part of the form but we have the information here we're really

11:24

concerned about our conflicts of interest analysis for underlying holdings here so what really we need to

11:30

do is conduct our conflicts of interest analysis on the actual underlying holdings of the report and if this were

11:37

the only error on this report I think I would accept it as it is and maybe make a note to the next time to put it in the

11:42

other section but since we're gonna be going back any way we could maybe uh maybe fix this technical error --air or

11:49

so these kinds of accounts we call them defined contribution accounts or really

11:56

tax deferred holding vehicles for underlying holdings and we see these a lot and one common error we encounter is

12:03

that filers do not disclose the holdings within the account so you'll often see

12:08

something like 401 K and that's it there are no underlying Holdings or you see

12:13

IRA no underlying Holdings or 403b and they won't have disclosed any underlying Holdings all those letters

12:21

and numbers tell us is that these are tax advantaged accounts and these accounts can hold anything from

12:27

individual stock to cash bonds other kinds of equity interest mutual funds

12:33

also two possibilities are available depending on the nature of the plan so if you were to see

12:38

this and there were no underlying holding so he didn't have to point one etc we'd really need to go back to the

12:44

filer and find out what's within those accounts that's probably one of the most common errors we see on public financial

12:51

disclosure reports as well as confidential reports but in this case they've done a pretty good job and they've told us what's inside of the

12:57

individual retirement account so the first thing we have is the Vanguard total market index fund and they've even

13:04

been nice enough to give us the ticker and it has a value of 15 to $50,000 and

13:11

it looks like they haven't received any income so I think the first question we're gonna have here is is this

13:18

diversified total market index sounds pretty diversified but what we're gonna

13:23

need to do is to go to the Vanguard website find this fund and take a look at their prospectus because we have a

13:31

particular definition we need to get to to find out if it's diversified and eligible for an exemption under 18 USC

13:38

Section 208 but the other question we're gonna have is is it an accepted

13:44

investment fund so they've indicated that it is an accepted investment fund which means the underlying holdings of

13:49

the fund needn't be reported but we want to verify that that's true so we have two important definitions and it's

13:56

important to keep these separate in your mind on the Left we have the diversified mutual fund and this is a concept that

14:02

is important for conflicts of interest this is about exemptions from the criminal conflict of interest law we

14:09

find at 18 USC Section 208 and the exemption here is that a diversified

14:15

mutual fund and unit investment trusts an employee may participate in any particular matter affecting one or more

14:22

holdings of a diversified mutual fund or a diversified unit investment trusts where the disqualifying financial

14:29

interest in the matter arises because of the ownership of an interest in the Thunderer trust so basically what this

14:36

is saying is you may have a conflict of interest with one of the holdings of the Vanguard total market index fund but if

14:43

it qualifies as a diversified mutual fund we don't have a problem under 18 USC Section 208

14:50

so we then get a definition of diversified and diversified means that the fund trust or plan does not have a

14:58

stated policy of concentrating its investments in any industry business single country other than the United

15:04

States or bonds of a single state within the United States so that's really

15:09

important we're looking at the stated policy of the fund so if it doesn't say

15:15

we focus in the pharmaceutical sector or a dot or some other business sector if

15:20

it doesn't say it focuses in one country outside of the United States if it doesn't say it focuses in the the bonds

15:28

of a single state within the United States then its diversified so in this case the Vanguard total market index

15:34

fund seeks to match the performance of the total market so it does not have a

15:40

state of policy of focusing in one one area of the economy this definition is

15:47

also important to find out if we have an accepted investment fund which is just a

15:52

reporting concept and you'll see that these definitions live in different parts of the regulation and here the

15:58

exact excepted investment fund lives in 5 CFR 2634 which is where we find the

16:04

reporting requirements so these are the things that must be disclosed on the 278

16:10

E and what it means is that we don't have to disclose the the underlying

16:17

Holdings and there are some criteria an accepted investment fund means a widely

16:23

held investment fund and we've said that a gia said that that's a more than a hundred people hold the fund so the

16:31

Vanguard total market index fund trades thousands and thousands of shares a day between many many many investors so

16:36

we're gonna get publicly traded or available widely held widely diversified

16:42

and the filer neither exercises control over nor has the ability to exercise control over the financial interest held

16:49

by the fund and then we have a definition it's widely diversified if it does not have a state of policy of

16:54

investments in any business industry a business or single country other than the United States or bonds of a single

17:00

state within the US so our fund is going to be widely held it's publicly traded we know that

17:06

because it has a ticker symbol the assets of the fund are widely diversified and the filer does not

17:12

exercise control over the holdings of the fund so unless our filer were for some reason the fund manager which our

17:19

CIO is not we also have an accepted investment fund so for this fund the

17:24

reporting is complete and the reason the reporting is complete is because it's an accepted investment fund and we don't

17:31

have any conflicts concerns because it's also a diversified mutual fund

17:39

so our next holding looks to be a stock holding of Adobe incorporated and this

17:46

raises some some red flags because Adobe is a technology company it's very likely

17:51

that our agency uses some Adobe products services maybe so this raises some

17:59

concerns and we'd want to look and see if we've given any guidance to our filer about staying out of out of matters that

18:07

would affect Adobe and we'd have to give some thought about whether such a recusal would be possible and we have

18:13

some additional concerns here because we definitely have that nexus between the CIOs responsibilities and a software

18:19

provider that's right often used in in in the workplace so there may be a

18:24

potential nexus there but the other concern we have is to the value of this security so he reports the as fifty to a

18:30

hundred thousand dollars worth of the security and those of you that have been doing this for a while know that that's well in excess of the fifteen thousand

18:37

dollar de minimis that we have for publicly traded securities so we're not going to have an exemption available

18:43

here so we may need to ask him to divest if if the recusal is not workable to

18:50

keep him out of matters that would affect directly and predictably the financial interests of Adobe so this is

18:56

kind of a blinking red light and we would hope that we've advised before and we don't have a problem but if we

19:02

haven't we need to call our filer right away and say you know stop working on anything and o be incorporated and then

19:09

let's talk about it figure out if you need to divest

19:14

so similar but different we have PayPal holding incorporated we know that they are a company that is involved in

19:22

processing electronic payments there may not be such a tight nexus between our CIOs responsibilities and the services

19:29

provided by PayPal but I think this is close enough that I'd want to think very carefully and dig in a little more to

19:36

make sure that our agency doesn't do any business with PayPal we don't use any of their of their their processing services

19:43

or otherwise contract with them we do have a little bit of some relief here

19:49

and that he reports between one and fifteen thousand dollars so it's possible that our exemption for

19:56

securities valued at less than $15,000 per particular matter may be available

20:01

to us one note of caution with that exemption is that the interests covered

20:08

by it or aggregated per particular matter so if he had more than one holding that may be in affected by a

20:15

single particular matter we would have to a granade the value of those holdings in order to see if the exemption applied

20:22

so this isn't a simple exemption that says anything you hold valued at less than $15,000 we never have to worry

20:28

about what it says is if you're asked to participate in a particular matter that affect one or more of your holdings the

20:34

aggregate value of those holdings must be less than $15,000 in order to use the

20:39

exemption another drawback to that exemption is it requires our employees to monitor the value of their holdings

20:46

and make sure that in aggregate or individually they don't exceed that threshold so notwithstanding the

20:52

availability of that exemption you may consider divestiture as a better option unless there are some sort of obstacle

20:59

to doing so we have another appears to

21:04

be an equity interest in Goldman Sachs group and again we ask the question is

21:09

there a nexus between the cios work in köppen Sachs and in this case I don't think there's a nexus so unless we had

21:16

some reason to believe you know maybe we worked in a financial services agency where that could maybe pose a peripheral

21:22

challenge that the office of government ethics we any matters that would directly and

21:27

predictably affect Goldman Sachs so we probably don't have a 208 consideration here and we also do have we can note

21:34

here that he has well he reports fewer than $15,000 worth of stock so an exemption may take care of any residual

21:40

risk this one's a tough one so we have

21:48

SMP index fund if I were to see this you

21:54

know I appreciate that it's been reported but one of the challenges we have is this is probably not the full

21:59

fun name and the full fund name is going to be really important because some SMP index funds are diversified and some of

22:08

them are sector funds so we're going to need to go back and find out which SMP index fund this is because if it's the

22:14

SMP pharmaceutical fund or the SMP telecommunications fund it may be a

22:22

sector mutual fund and then we would have to conduct a conflicts review to see if there is a nexus between that

22:27

fund and the duties if it's the spyder fund which is the whole S&P 500 index

22:32

then it's probably going to be diversified and it will qualify for an exemption in any of those cases it's

22:39

almost certainly going to qualify as an excepted investment fund unless it's something like a managed account so this

22:44

would be a definitely have to go back to the filer find out the full name of what this thing is and finally we have an

22:55

agreement we have a pension that the filer has reported with the united the united Parcel Service so it looks like

23:01

this is a traditional pension in that it entitles him to twenty five hundred

23:07

dollars per month once he reaches the age of 67 so these are what we call

23:13

defined benefit plans as opposed to defined contribution plans and the

23:18

difference here is that it's a contractual obligation between an employer or a company and its former

23:24

employers employees to pay our provide a benefit at some date certain in the

23:30

future so it's sort of a contractual obligation to make a payment and this

23:36

creates different kind of financial conflict of interest situation than a defined

23:44

contribution plan so in the case of the defined contribution plan we look to the underlying holdings of the company's

23:50

funds and other assets held within the plan and we conduct our review visa vie

23:55

those in this case what we have is we call it in 18 USC Section 208 ability

24:00

and willingness situation so the filers financial interest is in receiving those eventual cheques eventually receiving

24:08

those benefits it does not impute the entire interest of the United Parcel Service to our employee like owning

24:15

their stock would so our employer here our employee our filer would here be prohibited from participating in any

24:22

particular matters that would affect the ability or willingness of ups to make

24:27

good on their pension obligation so as the CIO at the office of government ethics there's probably no such no such

24:35

particular matter they're likely to be asked to participate in because we need to be a matter that would essentially bankrupt UPS but you could see at some

24:44

other agency say an agency that regulates shipping companies it's possible that that could come up or some

24:49

was engaged in litigation against the shipping company but then we'd have to ask that question is this likely to

24:55

affect the ability or willingness of UPS to make good on their pension obligation

25:04

so we see this reported again and this is one of those places where you want to see that the complete story is being

25:10

told because that's both an employment-related asset but it's also an agreement and arrangement so again we

25:17

see it reported here and we can kind of cross check that to make sure that it's a complete filing for filer sources of

25:26

compensation exceeding $5,000 in a year well the integrity system has been nice to us and told us it's not required for

25:33

this type of report and the guide tells us why because your sources of

25:38

compensation exceeding 5,000 in a year is for nominee and new entrants only and we have an annual filer here so we don't

25:46

need to worry about part four

25:52

getting to part five spouses employment assets income and retirement accounts so this is actually where the IRA probably

25:58

should have been reported but we also have some information about our employee spouse and our employees spouse looks

26:05

like she works for Amazon and it also looks like she has quite a bit of stock

26:11

in Amazon and that may be a bit of a concern for us and the reason that might

26:17

be a bit of a concern is that Amazon provides Web Services to a huge variety

26:23

of clients they are a huge provider of cloud computing technologies so this is

26:29

another place where we would want to stop in our tracks and say does or does our agency or organization currently

26:36

have business with Amazon or they currently seeking business with our with our agency have we taken steps to make

26:45

sure that our filer is not participating in particular matters that would have a direct and predictable effect on Amazon

26:52

and we have kind of a complicated conflicts of interest scenario here because we have both the salary but we

26:59

also have some equity and analyzing spouses employment interests under 18

27:04

USC Section 208 it's kind of complicated so if we didn't have the the Amazon

27:10

stock reported here we just had a salary so this person you know just worked there as an hourly worker no bonus no

27:17

pension no retirement no profit sharing just you know just drawing a salary an hourly salary we would have another one

27:24

of those 18 USC Section 208 ability or willingness situations and the question

27:29

we'd have to ask is could our filer participate in particular matters that would affect the ability or willingness

27:35

of Amazon to continue to employ his spouse and compensate he or she at the

27:42

same level and if the answer to that is no he may be able to participate under 208 though we might have some appearance

27:49

concerns under subpart E and we probably want to make sure to counsel our employee about possible misuse of

27:55

position or misuse of public office for private gain under subpart G but that

28:00

game's changed entirely when we add the additional equity interest because the spouse is full financial

28:06

interests are imputed to our filer and because it's an equity it's an ownership interest we take all of Amazon's

28:13

interests and impute them to our filer so now the duty to recuse isn't just

28:19

about ability or willingness to continue to employ the spouse the duty is to not participate in any particular matters

28:25

that would have a direct and predictable effect on the financial interests of Amazon full stop and we're still is that

28:33

we have more than $15,000 of Amazon stock so we know that the exemption for

28:38

securities is not going to be available to us and this is going to be kind of a sticky wicket because we know that this

28:46

is the employee spouse if this was the employees own outside position we would

28:51

offer maybe the choice to maintain Federal service but resigned from the

28:57

Amazon position here we don't really have that option with the spouses employment so this is gonna be difficult

29:03

for us to sort of unwind but we're gonna have to figure out either a way to keep our employer filer out of any government

29:09

matters affecting Amazon or maybe asking the spouse to divest of any equity interests so that we can rely only on

29:17

the ability or willingness recusal which may allow for our employee to participate in some matters affecting Amazon that aren't of a large magnitude

29:24

so probably our best bet is recusal if we can manage it or a limited recusal

29:32

plus a divestiture of the of the equity interest that's another possibility but this is going to be a difficult one

29:38

depending on the nature of Amazon's relationship to our country so you want

29:44

to probably deal with that right away because this is a big concern we have an

29:51

honorarium from George Villa University possibility for conflicts of interest

29:57

doesn't seem very high and that's going to be largely driven by whether the payment has been received or as a

30:03

receivable if it's already been received there's not a financial interest if it were an outstanding honorarium that's

30:09

owed say we might have an ability or willingness recusal until it's been paid but here it doesn't look like there's a

30:16

nexus between our CIOs responsibilities and to George real University unless we had

30:21

reason to believe otherwise but it may cause us to ask our filers since we're

30:26

going back any way to confirm that his spouse doesn't have another outside job that has resulted in in this honorarium

30:33

so it may be an indicia that there's an outside consulting business or outside writing or teaching job or something

30:40

like that and it might just be worth worth asking if this is a regular thing or if it was just you know they wanted

30:45

to hear someone from an executive from Amazon come speak to a business class and invited invited the spouse so I you

30:51

might want to ask a few questions there and if Chipotle Mexican Grill probably

30:58

not a nexus between the Mexican fast food restaurant and our cio so this is a

31:04

situation where we may be able to determine definitively that we don't have a potential for conflicts of

31:09

interest our agency has never done business with Chipotle Mexican Grill they don't provide services that we would want or need if I looks like a

31:20

publicly traded stock in the company of Twitter there may be a nexus here right

31:25

our our our agency may have a Twitter account we may use Twitter for advertising or recruiting or things like

31:32

that and if that's the case we will want to think about you know is that a nexus with the CIOs responsibilities maybe it

31:39

is maybe it isn't but it would be important to find that out because we might have a 208 concern the nice thing

31:45

here is that were less than $15,000 so an exemption may be available provided that a matter doesn't affect more than

31:52

one of the assets that would aggregate to more than 15,000 so this is kind of a tough call we may in this case decide to

31:59

rely upon an exemption or if it's close and we find that we do a lot of business with Twitter that divestiture is a

32:05

better option on to six other assets and income so

32:12

this is where we report kind of everything else things that aren't held in retirement accounts things that

32:17

aren't held in employer-sponsored retirement accounts or individual retirement accounts and here we have a

32:25

tricky one it says it's the fidelity equity income strategy so for the first

32:33

three words their first two words if we count the hyphenated one is one word

32:38

we're looking like maybe this is a diversified mutual fund but then they say strategy instead of fund and then we

32:46

have to worry so this is something that you're probably going to see more and more often these kinds of things are

32:52

becoming more popular or heavily marketed to regular retail investors not

32:58

just the very wealthy so what we need to do here is fire up our favorite search

33:03

engine and find out what fidelity equity income strategy is and this is what we

33:10

find and we find that the fidelity equity income strategy is a separately

33:16

managed account and the word account should send your your antenna up because

33:23

we're gonna have a challenge here and the reason is because when they say it's a separately managed account it means

33:29

that it's not a fund and so if it's not a fund it can't be an accepted investment fund it also cannot be a

33:36

diversified mutual fund so there isn't an exemption under Section 208 that will

33:41

manage our fidelity equity income strategy and there is not an exception

33:47

to the reporting requirement that would allow us not to report the underlying holdings so if you recall these are our

33:54

two sets of categories and it's gonna fail on both for the diversified mutual fund well it's not a fund for 26:34 it's

34:04

not a fund it's not widely held it's not publicly traded or available and the

34:10

filer does have control over and the ability to exercise some control over the interest held by the fund so this is

34:16

really like more like the individual retirement account where it's just on account

34:22

the fun an account that holds other assets so what we're gonna need is we're going to need to find out exactly what

34:29

those things are some of them may be mutual funds and if some of the holdings

34:36

just like the holdings of the IRA if they're diversify mutual funds the exemptions may be available they may be

34:42

securities that are unlikely to pose a potential conflict of interest I in which case we might not have a problem

34:48

we just need to make sure they're properly reported but we also could have equities held within this account that

34:53

do pose potential for conflict and then we're going to have a challenge of either divesting or managing managing

35:02

potential conflicts through recusal and we do cover this in the guide and it

35:08

says very very clearly here a managed account is not an accepted investment fund so we do need the underlying

35:15

Holdings and we do need to conduct a conflicts review of those underlying

35:20

holdings and one of the real difficulties with working with managed accounts is there someone else who's

35:26

making the day-to-day decisions about buying and selling things and they can inadvertently create conflicts of

35:32

interest for our employee so in this case there's a lot of money being held in this account so it would be very easy

35:40

for twenty or thirty thousand dollars of say I T company that does business with our agency to be purchased and you know

35:47

they notify our employee of the change in the account but maybe you know they don't take notice or they don't seek advice so managing conflicts within

35:54

these managed accounts is a real challenge and you know in many cases it's necessary for people to get out of

36:00

them because they're just not able to exercise sufficient control to ensure that they're not they're not

36:06

inadvertently or their fund manager isn't creating for them new conflicts of interest because oftentimes the

36:12

communication between the manager of the account and the employee is not ongoing

36:17

and they're making decisions independently so these are very difficult to manage every time you see

36:23

that word account it's pretty much a certainty that you're going to need the underlying holdings because it's not

36:29

going to be a fund so we have some transactions here it looks like this

36:36

holds some Amazon stock and also sold some initech stock and that raises some concerns it may be

36:43

the case that our Father spouse is regularly regularly receiving shares of

36:49

Amazon which could complicate our our management of a divestiture type

36:56

arrangement so that's something we want to look into and we will also want to check to make sure that our periodic transaction report was properly filed

37:04

likewise with the initech stock and this is an example of seeing if the report

37:10

tells a coherent story it may be a coincidence that our filer has stock in

37:16

initech but it also may be the case that part of his compensation for that position is coming from is in the form

37:24

of stock which would tend to suggest that he may be an employee he may be

37:29

more than just a contractor for them so it also creates a full 18 USC Section

37:35

208 situation because it's an ownership type interest so we'd really want to dig

37:41

into this and find out what's the situation with initech hopefully we've already done that in a counseling on the

37:47

outside activity but this is a strong data point that this may be actually an employment type position and in any case

37:54

if he's going to regularly hold in a tech stock it creates a full 208 because it's an equity interest we do have a

38:03

liability here we have a mortgage on a rental property and this is another example of the report telling a coherent

38:11

story because if I see a mortgage on a rental property but I did not see any income from said rental property that

38:17

may be a reporting error so we'd want to get back to the filer and have them

38:23

properly report the rental property if it was a source of income during the reporting period and finally we do have

38:33

a gift our travel reimbursement that's reported and it looks like he received a

38:39

a travel reimbursement from marina stage to go to New York and to see a show is

38:45

valued at $3,600 hopefully we've already provided advise so this is a place where

38:50

you want to consult the advice file and see if you've already looked at this because if you have you know maybe no big deal

38:57

and it is probable that we could find the exception at 5 CFR 26:35 204 e 2

39:03

which is gifts based on outside business as an exception that would allow this to be accepted but hopefully our employee

39:10

has received advice because they came to ask us about accepting the trip before

39:15

they went so that's just something that can help you save time so again using

39:21

these questions can help us conduct better public financial disclosure reviews so do we have enough information

39:27

to determine we definitely have a conflict or definitely will not have we taken steps to make sure that all

39:33

potential conflicts will be avoided do we have a complete report according to the requirements of the ethics and

39:38

government act but not just that does it tell a coherent story or does it suggest we're missing information so in this

39:44

case the report is missing quite a lot of information we're gonna have a lot of questions to go back to our filer and

39:49

then finally we can ask you know could someone from the outside to understand what's going on this in this report and

39:54

if you know we're looking at the story of the report and it doesn't make sense we need to go back to our filer and make

40:00

sure that it does so finally these are the ways that we help to avoid conflicts

40:07

of interest the first go-to is exemptions again you know some of them take care of problems so we don't have

40:13

to worry about them for example the exemption for diversified mutual funds but some of them require more active

40:19

management such as the exemption for for

40:24

interests in securities where we have a de minimis of $15,000 for specific party

40:29

matters but that's an aggregate interest and we need to make sure we stay our filers are staying below the threshold

40:34

so that can be some of them are easy some of them are a little more challenging to manage but that's a good place to start and if we don't have

40:41

exemptions available or they're not gonna be workable we have other remedies recusal merely staying out of

40:49

potentially conflicting matters is the the least burdensome for the employee

40:55

and in some cases it may be the only remedy available to us for example in the case of a spouse's employment

41:00

arrangement we also have divestiture which is a safe one because it allows the to get out of the financial arrangement

41:08

that's causing potential conflicts of interest and if they just sell it all they don't have to worry about it if

41:14

that's not workable we do have a possibility of an 18 USC Section 208 waiver and just a word of caution you

41:22

are to consult with OGE wherever practicable so if you're within arm's reach of a telephone which

41:29

most of us are our 24 hours a day it's practicable to work with OGE so if you're thinking about a 208 waiver

41:35

give us a call and we can work through that with you or a 502 authorization if

41:41

we have a mere appearance consideration really important not to try and fix potential criminal conflicts of interest

41:47

with a subpart e authorization because it doesn't work so we have to make sure the threshold question for the

41:53

authorization is that we have a mere appearance concern and finally resignation so in this case we have

41:59

maybe a potentially conflicting outside position so we can ask the employee you know you got a pic you can either be the

42:05

CIO or you can be a consultant for an attack you can't be both because I post

42:10

this too great a danger for conflict so directed resignation as possible so

42:18

thank you very much and I hope this has been a helpful exercise I hope this

42:24

helps you complete your reviews of the reports that are being filed this week and over the next few weeks we hope we

42:31

have a lot of other resources available to you I'd encourage you to rely heavily on their compilation of the ethics laws

42:36

and regulations as well as the financial disclosure guide and with those two sets

42:42

of tools you should be well-positioned to have a very successful to 70-80

42:47

financial disclosure review season we hope that you do have a very successful season and we look forward to seeing you

42:54

for a training event in the near future

welcome to how to research financial

0:03

instruments for 278 reviewers my name is

0:05

patrick shepard i'm a senior instructor

0:06

here at the institute for ethics and

0:08

government

0:10

when we're talking about the public

0:11

financial disclosure system we have two

0:13

goals

0:14

one is complete reporting and two is

0:17

prevention of conflicts of interest

0:20

these are both important in the 278

0:22

system

0:23

because these reports are publicly

0:25

available so if a citizen is to request

0:27

a report

0:28

we want to make sure it's complete so

0:29

they can understand it we also want to

0:31

make sure that we've resolved any

0:32

conflicts of interest

0:33

to prevent any reduction in the public's

0:36

trust in government

0:41

to evaluate whether there are potential

0:44

conflicts of interest we need two pieces

0:45

of information

0:46

we need the financial holdings as

0:48

reported on the form

0:50

and we need to understand the duties and

0:51

responsibilities of the position

0:54

a conflict of interest occurs when the

0:56

duties of a government employee overlap

0:59

with their financial holdings so it's

1:02

important for us to have both pieces of

1:03

information

1:05

if you're new to the process of

1:07

identifying and preventing potential

1:09

conflicts of interest

1:11

there are many courses in the institute

1:12

for ethics and government library

1:14

to help you understand better

1:18

today we're going to be talking about

1:19

researching particular holdings that are

1:22

reported on the form

1:24

and we're going to use this four part

1:25

process

1:27

in part one we're going to ask what is

1:29

it what is the holding that's reported

1:31

on the form

1:33

the second question we're going to look

1:35

at is is it properly reported

1:38

third we're going to think about whether

1:40

it creates a possibility for conflict of

1:42

interest

1:43

and fourth we're going to see if there's

1:45

an exemption or remedy available to

1:47

prevent the potential conflict of

1:48

interest

1:52

in order to work through these steps

1:55

we're going to need a number of

1:57

resources

1:59

first we're going to need access to a

2:00

search engine so we can find out what

2:02

various holdings are we're going to need

2:05

to be familiar with oge's financial

2:07

disclosure guide

2:09

so we can find out if they are accurate

2:10

accurately reported

2:13

we're going to want to be aware of the

2:14

conflict of interest write-ups that oge

2:16

is published

2:17

because they provide us a template and

2:19

roadmap for conducting a conflict of

2:22

interest analysis

2:23

we'll also want to be familiar with og

2:25

advisories and laws and regulations

2:30

so here are the four assets we're going

2:32

to look at today

2:34

and these are all reported on part 6 of

2:36

a 278

2:37

e the first one we're going to look at

2:39

is duke energy company

2:44

so here's our process what is it is it

2:47

properly reported

2:48

does it create a possible conflict and

2:50

if it does is an exemption available

2:52

so let's get started

2:57

if we do a internet search for duke

2:59

energy corporation

3:00

stock we may receive a result that looks

3:03

something like this

3:04

we find out that it's a publicly traded

3:06

company as indicated by its trading on

3:08

the new york stock exchange

3:10

and we have some information about the

3:12

company that it is an american electric

3:14

power holding company headquartered in

3:15

charlotte north carolina

3:18

so that answers the what is it question

3:20

duke energy is an american energy

3:22

company

3:26

next we want to know is it properly

3:27

reported

3:29

and to do that we can go to og's website

3:32

and the first place we'll want to look

3:34

is in the financial disclosure section

3:36

of resources for ethics officials

3:39

and if we go there and scroll about

3:40

halfway down the page we'll find some

3:42

guidance

3:43

and the first document is public

3:44

financial disclosure guide

3:46

i prefer to use the html version

3:50

once we open that guide we can navigate

3:53

to part 6

3:54

of the form other assets and income

3:58

look for the word stock in this list of

4:00

assets and income

4:02

and we come to this page and it details

4:05

what we need to include on a 278 in

4:08

order to properly disclose a stock

4:11

we need the name of the company stocks

4:13

are not funds so they're not accepted

4:15

investment funds

4:16

we need the value of the company we need

4:18

the type of any income

4:19

and we need to report the amount of any

4:21

income so in this case we saw that duke

4:24

energy

4:24

had a value of up to fifteen thousand

4:27

dollars

4:28

the type of income was dividends and the

4:30

income amount was two hundred to one

4:32

thousand dollars

4:33

so we have a properly reported stock

4:39

which brings us to the next part of the

4:41

process

4:42

figuring out if there's a possibility

4:43

for conflict of interest and thinking

4:45

about exemptions

4:47

for this we need to go to a different

4:49

part of ujji's website we want to look

4:50

at conflicts analysis and resolution

4:53

under resources for ethics officials

4:56

and again if we scroll about halfway

4:58

down the page we get some resources

5:01

and the resource we're looking for is

5:03

analyzing potential conflicts of

5:04

interest

5:05

when we click on that we get a number of

5:08

documents

5:10

that deal with categories of reported

5:12

holdings

5:13

and for this entry we want to look at

5:14

conflicts of interest considerations for

5:16

assets

5:21

once we do that we get a large pdf and

5:23

on page 13

5:24

we cover stocks and you can use this for

5:26

all sorts of different kinds of assets

5:28

i'd encourage you to look at the table

5:29

of contents

5:32

and what this tells us is that stock

5:34

ownership creates an

5:35

ownership interest in the company so

5:37

that if an employee's

5:39

government work or a particular matter

5:41

to which the employees assigned

5:43

would have a direct and predictable

5:45

effect on the company's financial

5:46

interests

5:47

we have a potential for conflict of

5:49

interest

5:51

so that's very important to know the

5:52

criminal conflict of interest statute 18

5:54

usc section 208

5:56

says that stock ownership can create a

5:59

financial conflict of interest

6:02

we also have some information here about

6:04

possible exemptions

6:06

in five cfr 2640 so let's take a look at

6:09

that

6:12

if we look at 2640 202 exemptions for

6:15

interest in securities

6:17

we do have a de minimis exemption for

6:19

matters involving parties

6:21

so those are the

6:24

kinds of particular matters that produce

6:27

a

6:28

conflict of interest through named

6:29

parties for example an investigation

6:32

or a licensing or litigation

6:35

and we have a de minimis threshold for

6:38

fifteen thousand dollars

6:39

for financial interests arising from

6:42

ownership of publicly traded securities

6:45

in this case we have a public

6:46

stockholding

6:47

we know that it's valued of less than

6:48

fifteen thousand dollars so there is an

6:50

exemption available

6:52

if we had an employee who is frequently

6:54

working on matters that would

6:56

affect or involve duke energy we may

6:58

advise them to divest of that holding

7:00

out of an abundance of caution so they

7:02

don't have to monitor the value of the

7:04

holding to ensure that it stays below

7:06

fifteen thousand dollars

7:12

so for our first entry we have indicated

7:16

we've completed all of the steps in the

7:17

process we know what the holding is

7:21

we know it's properly reported we

7:24

understand how stock holdings create

7:26

potential conflicts of interest

7:28

and we know that if we did have a

7:29

potential conflict there's an exemption

7:30

available but we could also

7:32

ask the employee to divest out of an

7:34

abundance of caution

7:40

so let's take a look at these next two

7:42

assets together we have agl energy

7:45

limited

7:45

adr and lloyd's bank group plc adr

7:50

and then we have a stock ticker symbol

7:52

provided it looks like

7:54

lyg let's see what we can find

7:59

so our first step is to find out what it

8:01

is and if we do an internet search for

8:03

agl energy limited we find out that it's

8:06

an australian

8:08

energy company so it's a foreign energy

8:11

company

8:15

and if we look at lloyd's bank group plc

8:17

adr

8:19

we find out that it is a british

8:21

financial institution as a financial

8:23

services company

8:26

so that satisfies our first step finding

8:28

out what these things

8:30

are that we're going to look at what an

8:32

adr is in just a second

8:33

so let's find out if they're reported

8:35

properly

8:37

if we go back to the guide and go to

8:41

chapter six part six of the form we can

8:44

look for

8:45

american depository receipt because

8:47

those letters

8:48

adr indicate that something is an

8:50

american depository receipt

8:52

an american depository receipt is

8:54

basically an investment vehicle that

8:56

allows

8:57

american investors to invest in foreign

8:59

companies

9:00

without having to go through the

9:02

regulatory processes

9:04

to trade on a foreign exchange

9:08

the reporting is very similar to a stock

9:10

reporting

9:11

we need the name of the company we know

9:13

that these are

9:14

our shares so it's not an accepted

9:15

investment fund we need the value

9:18

the income type if any and the amount

9:20

and for both of those holdings

9:22

we have that information it's nice to

9:24

have a stock ticker symbol

9:26

but it's not required and if we can

9:28

easily figure out what's reported here

9:30

that's sufficient to satisfy the

9:32

reporting requirements

9:36

so let's move on to the conflicts

9:37

analysis and resolution

9:40

we can go to that same section in that

9:42

same document and go to page two

9:44

and look at the entry on american

9:46

depository receipt

9:48

and again we have some indication about

9:50

how 18 usc section 208 the criminal

9:53

conflict of interest statute

9:55

treats american depository receipts

9:59

and what we see is that we have a

10:01

prohibition on participating personally

10:03

and substantially in any particular

10:04

matter

10:05

that the employee knows would have a

10:06

direct and predictable effect on the

10:08

issuing company

10:10

so essentially our analysis is exactly

10:12

the same as it was with the stock

10:15

that it creates an ownership type

10:17

interest and

10:18

employees are prohibited from

10:20

participating personally and

10:21

substantially

10:22

in particular matters that would affect

10:23

the company not just the value of their

10:26

shares

10:27

and again we have some information about

10:29

exemptions

10:31

there's an important note here

10:35

if we look again at the exemption for

10:37

interest in securities

10:38

we will see again we have available the

10:40

fifteen thousand dollar de minimis

10:42

and that the minimus again is the

10:44

aggregate so if we had more than one

10:46

company that was affected by a

10:47

particular matter

10:49

we would need to aggregate the value of

10:50

those interests

10:52

but there's something very important

10:54

here is that in order for this exemption

10:56

to apply

10:56

the securities must be publicly traded

10:59

and not all american depository receipts

11:02

are publicly traded

11:04

so let's take a look at the definition

11:05

of publicly traded

11:10

so publicly traded means it's registered

11:12

with the sec pursuant to section 12 of

11:14

the securities exchange act of 1934

11:17

and listed on a national or regional

11:19

securities exchange

11:20

or traded through the nasdaq there are

11:23

two other for other kinds of companies

11:25

but this is going to be the operable

11:26

definition for adrs

11:28

and the thing that we're going to be

11:29

concerned about is whether or not the

11:31

adr

11:32

is traded on an exchange a national or

11:35

regional exchange which means an

11:36

american exchange

11:39

so let's take another look at the

11:40

information we have about these

11:41

companies

11:44

we can see that youid's bank lloyds bank

11:46

group plc

11:48

has an indication that it trades on the

11:49

new york stock exchange so that means

11:51

it's going to be publicly traded

11:54

and because it's publicly traded the

11:56

fifteen thousand dollar de minimis is

11:58

available to us

12:00

however agl energy limited indicates it

12:03

trades on the otc

12:04

mkts which stands for over-the-counter

12:08

markets

12:09

over-the-counter securities do not trade

12:11

on an exchange so do not meet the

12:13

definition of publicly traded

12:14

so we do not have the 15 000 minimus

12:17

exemption available to us

12:19

so our conflicts analysis even though

12:21

these are both adrs

12:23

suggest that one is eligible for the de

12:26

minimis

12:27

exemption for securities and the other

12:29

is not by virtue of the way they trade

12:33

so this is something you want to be very

12:34

careful with whenever you see an

12:36

american depository receipt

12:38

and in fact some stock also trades over

12:41

the counter so if you see a stock

12:43

holding and it indicates it trades over

12:44

the counter

12:45

you want to make note of that because

12:47

the diminished exemption is not

12:48

available in that case either

12:53

so we've completed our process we found

12:55

out what these american depository

12:56

receipts are

12:58

we determined that they were properly

12:59

reported we thought about the conflicts

13:01

of interest

13:02

concerns and we found out that there was

13:04

an exemption available for the publicly

13:06

traded of the two

13:07

and there is no exemption available for

13:09

that security that trades over the

13:11

counter

13:17

that brings us to our final entry

13:19

fidelity select

13:20

natural gas portfolio and this looks

13:23

like it may be a fund

13:25

or a collection of investments because

13:27

the filer indicates it's an accepted

13:29

investment fund

13:30

with a value of fifteen to fifty

13:32

thousand dollars

13:36

so if we are go to go to uh if we do an

13:38

internet search

13:39

we can actually find the fidelity select

13:41

natural gas portfolio

13:43

and we have an indication that it's a

13:44

mutual fund at the top of the screen

13:46

here

13:47

we find out that this is a mutual fund

13:49

that invests in the natural gas

13:51

industry so that helps us to satisfy

13:54

that first question

13:55

what is it the next thing we want to do

13:59

is find out if it's properly reported

14:02

and here we'd like to have a description

14:03

of the fund an indication that it's in

14:05

eif

14:06

and the value and any income if there is

14:08

some

14:10

it would be nice if we had the ticker

14:11

symbol here but because we were able to

14:13

find it

14:14

we don't need it necessarily

14:20

something we want to be thoughtful of

14:22

when we're looking at things called

14:24

portfolio

14:25

is they're not always mutual funds

14:27

sometimes they're what's called a

14:28

managed account and the difference is a

14:30

managed account

14:31

isn't an accepted investment fund in

14:33

fact it's not a fund at all

14:35

so if we are not able to find this

14:36

listed as a mutual fund we'd want to see

14:38

if it's a managed account

14:40

and consult the guidance for managed

14:41

accounts instead

14:45

so it looks like we have a pretty well

14:46

reported mutual fund here

14:51

and again we can look at oge's guidance

14:54

about

14:54

analyzing mutual funds exchange traded

14:56

funds and unit investment

14:58

trusts in the conflict of interest

14:59

write-ups

15:02

and these usually create potential

15:03

conflicts when

15:05

a particular matter affects one or more

15:07

holdings of the fund

15:09

but we do again as we did before have

15:11

some exemptions available

15:14

so let's find out if we have an

15:15

exemption available for this natural gas

15:17

fund

15:18

let's imagine we had an employee who was

15:20

participating in regulating

15:22

or investigating the natural gas

15:26

industry and we were concerned that such

15:28

a matter might arise and we wanted to

15:29

find out if an exemption was available

15:35

well the first thing we have to do is

15:36

determine if it's a diversified fund or

15:38

a sector fund

15:40

and a sector fund is a fund that

15:41

concentrates its investments in an

15:43

industry business

15:45

single country other than the united

15:46

states or bonds of a single state within

15:48

the us

15:50

and it sounds like this is a sector fund

15:52

the natural gas

15:53

industry seems to be a sector and a

15:56

rather narrow one at that

15:58

so let's see if we have any exemptions

16:00

available for interest in sector funds

16:06

and indeed we do here is here are some

16:08

text from 5 cfr 2640

16:11

and it says an employee may participate

16:12

in any particular matter affecting one

16:14

or more holdings of a sector fund

16:16

where the affecting holding is not

16:18

invested in the sector in which the fund

16:19

concentrates

16:20

so if for example this fund were

16:24

investing in the disney company on a

16:26

given day because they had some extra

16:28

money lying around

16:29

they put it in disney because it's not

16:31

in the natural gas sector

16:33

um that would be exempt per se

16:36

from coverage under this this provision

16:38

of 2640

16:40

but perhaps more importantly we have an

16:42

exemption for

16:44

participation in particular matters

16:46

affecting one or more holdings of a

16:47

sector mutual fund

16:50

where the disqualifying interest or in

16:52

the matter arises because of ownership

16:55

where the aggregate value of funds in

16:57

the sector does not exceed fifty

16:58

thousand dollars

17:00

so if this were the only sector fund in

17:02

the natural gas

17:03

industry and the matter was affecting

17:05

the natural gas industry

17:08

we might be able to rely upon the fifty

17:09

thousand dollar de minimis

17:11

and when making this determination we

17:13

can look at this definition of sector

17:14

mutual fund

17:15

or sector unit investment trust and it

17:18

means a mutual fund or unit investment

17:20

trust that concentrates its investments

17:22

in an

17:22

industry business single country other

17:25

than the us

17:25

or bonds of a single state within the

17:27

united states and in this case we have a

17:29

stated policy of investing in natural

17:32

gas so it looks like this exemption

17:34

might be available

17:36

again if our filer had lots of assets in

17:38

this class or was very close to the

17:40

minimus

17:40

we may recommend divestiture in an

17:43

abundance of caution

17:47

so again this is our process what is it

17:49

is it properly reported

17:51

does it create a possible conflict of

17:52

interest and if it does is an exemption

17:54

available or

17:55

is there a remedy we should implement

17:58

and again we've taken a look at the

17:59

mutual fund and found

18:01

uh the answers to all of these questions

18:05

and finally the resources we want to

18:06

keep in mind search engine

18:08

financial disclosure guide conflicts of

18:10

interest write-up and of course oge

18:12

advisories

18:13

and laws and regulations

18:16

we hope you found this helpful and wish

18:18

you a very successful financial

18:19

disclosure season

18:21

we look forward to seeing you again next

18:23

time