hello and welcome to the 2021 oge form 450 review exercise uh today

0:06

we'll be looking at a form filed by a director of lab safety uh good morning i'm patrick shepard i'm

0:12

a senior instructor here at the institute for ethics in government and i'm very pleased to be joined today by cheryl kame piasecki welcome show

0:19

thanks very much patrick it's nice to be with everyone yes it's great to see everyone we hope you're staying safe and

0:24

healthy uh we have a lot of exercise to get into so i think we're gonna flip over to the slide deck and get started

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so when we're talking about confidential financial disclosure we really want to focus on its purpose

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and in this system that purpose is singular and it is to prevent conflicts of

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interest you may be familiar with the public system which has a disclosure

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and transparency element that element's not present present in the system of confidential

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financial disclosure so we're really focusing solely on preventing conflicts of

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interest and you'll see this throughout the program when you look at the definition of filer it's based on a risk assessment by your

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agency about who has the greatest risk for conflicts if you look at the

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flexibilities in the form with oge's permission you can change the instructions the information you gather and even the form

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itself if you need different information to prevent conflicts of interest so when we're thinking about

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confidential financial disclosure reporting and review the only thing we're thinking about is

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preventing conflicts of interest so the question is what is a conflict of

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interest and in short it is an intersection between government work

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and financial holdings so it's a nexus between the duties and

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responsibilities of an individual employee and the holdings and other interests that they've disclosed on the form

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so as you are thinking about reviewing reforms as you're looking at reports you want to

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look for any nexus between the duties and responsibilities of the position and the holdings

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reported on the forms so in the case of for example a contracting officer if they were asked to serve on a source election

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and one of the the bidders was a company in which they owned stock that would be a nexus that could

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potentially be a financial conflict of interest so we're looking for that intersection between duties and holdings

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it's really important to know what you're certifying to as a review and certifying official

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and so we have the certification statement right here on the form and it says on the basis of the information contained in this report

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i conclude that the filer is in compliance with applicable laws and regulations

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so the question here becomes what do we mean by laws and regulations

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the primary authority the one we see most often is 18 usc section 208 which is the

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criminal conflict of interest statute and this deals with financial conflicts of interest if you're new to this and you're not

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familiar with what section 208 covers if you've never heard of it before we have a number of classes in the

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institute for ethics and government that can help you get up to speed with the elements of section 208

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we're not just talking about financial conflicts of interest however we're also concerned with subpart e of

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the standard conduct which covers impartiality so these are situations where there's not necessarily

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a financial conflict of interest but there may be the appearance of a conflict or an appearance of partiality

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so often we'd see this uh for example with a continuing relationship with a former employer

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that may be reported on a new entrant report we also want to think about the misuse of re of position regulations in subpart

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g of the standards this covers all kinds of misuse from simply using public office for private

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gain to misuse of non-public information to endorsements uh and we're primarily concerned with

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this uh when we're looking at some of the outside activities and positions that may be reported on the form

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and finally when we get to part five of the form we're going to want to be conversant in

4:07

the gifts regulations in some part b of the standards and the reason for this is because our filers

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are required to report certain gifts from outside sources and we want to ensure that those gifts have been accepted in accordance with

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the provisions in subpart b

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we'll talk a little bit about the review process itself and sort of what you ought to be doing as a reviewer

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and the question that always animates my technical review of oge forms 450

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is do i have the information i need to determine affirmatively for each entry that either

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there is a potential for conflict here and there are steps we can take to avoid that

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or there is no possibility for conflict so if you look at an entry and it's

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ambiguous you don't have sufficient information to tell definitively that there

5:02

is a possibility for conflict or definitely not then you need to gather more information and as you do that it's very important

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that you document document document so keep good reviewers notes if you have back and forth with filers

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which is often necessary it's very typical that you have to go ask a question or two make sure you keep good records of those

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interactions where you make substantive determinations document the basis for

5:28

these determinations and finally where you do find potential for conflict of interest

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make sure the employee is very clearly aware of the steps he or she needs to take to prevent those conflicts of interest

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and that can take the form of a cautionary memo which is a guidance document to the employee or in some cases maybe you want

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to do a formal ethics agreement where the employee commits in writing to taking certain steps to avoid conflicts of interest

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but the most important thing here is to document document document and the reason being that it's possible

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someone will come behind you maybe because there's been a potential criminal violation or an oge program

6:03

review and they'll want to be able to understand what your review entailed and how you came to the determinations you

6:09

made if you get nothing else out of this

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course we will have been successful if all we do is let you know that the confidential

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financial disclosure guide exists and is available for your use it's on the og website we'll put a link

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on the course page so you can find it easily this is really the shop manual for reviewing oge forms 450.

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if you have questions about particular entries how to report them how to do a conflicts analysis this document is the guide that will

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help you through that work we also have a lot of educational

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resources and these are especially good for folks who are new to the review of oge forms 450.

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uh this is a page on the institute for ethics and government website it's the oge form 450 review curriculum

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and here we've tried to bring together all of the resources that you need in order to review on oge form 450

7:07

so we have job aids we have descriptions and courses that help you understand the underlying laws and regulations

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and a number of opportunities to practice reviewing

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as patrick discussed the sole purpose of the og form 450 is to

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prevent conflicts of interest and as he described earlier the what we're looking for is the nexus

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between the duties and responsibilities of the filer's position and any uh financial or other interests

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that the employee may have that could be affected by the work that they're performing so one of the first pieces of

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information that you should have or have some presence of mind about is that first piece which is what are

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the duties and responsibilities of the employees position so we've given you as part of the exercise

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that piece of information we've started out by giving you an agency profile so that you have some sensibility

8:05

about what the occupational safety office laboratory safety division does and we've given you a sense of their

8:12

mission which is basically they're a rule making body um which they and they provide guidance

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as well about uh laboratory safety for personnel in addition we've also given you and on

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the next slide you'll see the employee profile um now here we're talking more discreetly about what your employee

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is actually going to be doing by way of duties and responsibilities and we know that we've given this to you

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and quite often this is the piece of information that you may very well be missing um but i think it's important to have at

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least some general sensibility when you start your review or before you start your review

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about what the potential universe of conflicts might be so if we look at mahendra patel's job

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duties we see that as the director of lab safety he has some responsibility for overseeing

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safety inspectors and technicians so that's an enforcement type of responsibility

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he is uh responsible for making regulatory recommendations and policy

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changes as well as contributing to proposed rulemakings on lab safety and training requirements he

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also serves on the oso's laboratory safety advisory committee and this would be something

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that would be especially important i think because as we describe in the next paragraph this advisory committee is comprised

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of uh of participants who are from non-federal entities like academic

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institutions and private clinics and public health organizations so it's important to have those kinds of

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pieces of information sort of front of mind before you actually begin the review

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of your confidential financial disclosure form so that it's so that things may jump out at you you

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might be able to red flag things more easily because you have a sensibility about the

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types of entities that could create a potential conflict between your employees duties or with

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your employees duties so as a general proposition if you don't

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have a lot of specific information about what your employee does you might want to at least try to think about

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generally sort of the types of particular matters that the employee is likely to be uh engaged in um for our director

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we if you think along the lines of specific party matters we know that he's going to be responsible for overseeing

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inspections um that may also include investigations uh oftentimes these types of

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organizations have grant making functions and grant-making responsibilities so we might be thinking along those lines like

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who would be a potential grantee certainly all these types of organizations have contracting and

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procurement so we might want to have available who are the likely sources vendors and sources of

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contracting for the lab for the laboratories um and in addition scientific organizations

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uh research and organizations in particular tend uh to engage in cooperative

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research and development agreement so the acronym is kratos um and very quite often this is is

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with uh university research facilities um so that's another possibility

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um we know that it's a standard setting uh function that the the laboratory has and that the

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director has and so we know that matters of general applicability are going to include things like policies rule makings and

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regulations and because they're matters of general applicability the universe of entities that could be affected by those types of

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matters is is per force much larger than a specific party matter so again

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be thinking about who all could be affected uh by the duties and responsibilities of

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your agency generally and also of your employee in particular so that brings us to the next slide of things to

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think about which is and in our particular case who are the stakeholders who are the people who are the organizations what types of

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organizations are likely to be affected by the work of our agency by the work of

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this employee and so we're looking at federal laboratories as well as other private research and

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clinical laboratories those are typically going to be associated with hospitals and universities or health care related

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companies for purposes of contracting and vending we're going to be looking at laboratory

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equipment and supply manufacturers also training functions like lab safety

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education and training programs would certainly be also something that could be affected by the standard setting body

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and finally professional associations and societies that clearly have an interest in the standards of a

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setting of this the lab safety division

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so now that we thought about and have in our head a little bit an idea of the duties and responsibilities of the

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position now we need to jump into the og form 450 because it's in the og form 450

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where we're going to get the other piece that we need for our nexus test which is what are the financial interests or

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holdings or positions that the employee holds that may or may

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not be affected or have a relationship to the employees responsibilities so the

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cover page of our confidential financial disclosure report for our filer um indicates that again he's the

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director of laboratory safety in the laboratory safety division of the occupational safety office

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it also indicates that he's an annual filer so this is an annual report and it's important to think about this

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from the standpoint that that tells you that you should have at least one other report on file for

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this filer and as patrick talked about earlier the important of documenting the important importance of taking reviewer

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notes the importance of getting additional information or asking questions

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having a record of all of that is going to assist you annually each time you're doing a de

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novo review basically of this employee's uh holdings and and interests and

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positions so if you have some questions on the current report it may very well be that the answer to

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those questions particularly any substantive determinations that may have been made about positions that were held

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or assets that were held the answers to those are going to lie in the prior review

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and the the notes and documents that are that are have been uh retained with respect to that prior

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review now just as a point a point here about filing status

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i just want to note that had our filer been a new entrant filer uh we definitely would have wanted to

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see the new entrant date of appointment um we would have wanted to go back to the filer for that because

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the date of appointment is the triggering date for the 30-day filing requirement so a new

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intern filer has to file their new entrant report within 30 days of their date of appointment

15:01

so the next section of this report um is really where we get a

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glimpse into what we should expect to see on the report here your filer is is required to

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indicate by either indicating yes or no for each part of the form whether or not you should expect to see

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something reported on that section of the report so our filer has said for parts one three four and five

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they've answered yes which means we should when we look at the report see something indicated in those parts um

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we're gonna come back to part five later on to discuss uh part five because he's indicated yes for part five and that is

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the one part where he has actually not disclosed anything so we're going to be following up on that when we get to

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part five um but we do have something disclosed in parts one three and four now quickly for part two i just want to

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indicate the fact that our filer has said no it never ever hurts to go back and confirm with the filer that when they

15:58

said no they meant no but i would say that more often than not when someone indicates no one part two

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that will be correct because the filing requirements for liabilities in part two

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is a universe that is very circumscribed um you do not have to report i repeat

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you do not have to report uh common types of liabilities such as

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mortgages on a personal residence student loans credit card credit card debt

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other types of bank loans if they come from a financial institution

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and they're on terms that are generally available to the public so that's going to be the majority of

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liabilities that most people hold and those types of liabilities are not going to be reportable

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so don't be surprised and don't feel that you necessarily have to always go back and confirm

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uh that no means no in part two because there are actually not very many liabilities that

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are that are reportable on on part two so then if we go to the final thing if we go to the next slide

17:04

we'll see that the employee is responsible obviously for signing and dating the report and

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it's really important that you make sure that they have done this because here the employee is certifying

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that everything that they've disclosed on the form that the statements are true complete

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and correct to the best of the employees knowledge

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so now we're going to jump into the report we're going to actually look at what our filer has disclosed and in part one for assets and income

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what we're what we're expecting to see in assets and income are outside earned income both for the

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employee and for the spouse so we're looking for sources of outside earned income

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and this is an area where there is notoriously under reporting not necessarily willful

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but if you don't see spousal employment or spousal holdings that is quite often something that

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employees just neglect to disclose because they're unaware that they have to so you should you should expect to see

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employment interests and assets both for the employee and for the employee's spouse so let's

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look let's start by looking at the first asset that's listed on the report of the first source of income on the report and

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it's bio raft digital lab risk management and it he indicates that it is no

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longer held so what is it that we want to ask ourselves about this

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well the list of questions that we want to begin with and these are going to be sort of a consistent theme throughout the

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review of your forum is first of all what is the interest we can't possibly do a conflict of

18:47

interest analysis if we don't know what the nature of the interest is so we want to know what is

18:52

this interest both what is bio-raft but we also want to know what type of interest

18:58

is it is this a source of of earned income is this an asset that's held for

19:03

investment purposes like what is what is this to the filer we want to find out who held it and confirm

19:10

that it is actually no longer held and most importantly we want to answer the question for ourselves okay so is there any

19:16

likelihood of overlap any kind of connection or nexus between this interest and the employees duties

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so on the next slide we're showing you that we went out to the internet and if you had gone out to the internet to look

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up bioraft you should have found uh their website um and actually the description for bioraft on

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their website is pretty oblique so the definition or the the description that uh our filer gave

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us is actually probably um as good as we're gonna get effectively it's a

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it's a software uh risk mitigating risk and achieving compliance software

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framework and a compliance management system um and i think the most important thing is

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to know that it that it is a system that is geared toward improving lab safety so

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we know as a very basic uh from the very basic description that we definitely have a relationship here

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this is a digital risk mitigation solution for lab safety issues i think the other

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thing that's important is that it has a business unit that is uh that addresses government

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so it's an organization that clearly does business with the government so again another pointer that we do have some

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sort of relationship between this entity and our employees

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duties now so to figure out better like what this

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is uh the og form 450 really has to be read a little bit like a storybook

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um i know that reviewers and filers sometimes get frustrated because there seems to be a redundancy of

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reporting across the report from part to part and this is an instance where that

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redundancy of reporting is really helpful so when you go to part three of the report and we look at the outside positions on the report you'll see i

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have highlighted here he tells us what bio-raft represents it is

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a source of outside-earned income he indicates still that it's no longer held but it appears that our filer has uh

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served as a consultant for bioraft and then if we look at uh so if we look

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at at part three we have to ask ourselves okay so now we know it's a consultancy now we know evidently it's no longer

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held and we know that bioraft seems to relate to the employees duties so what are the questions we need to ask

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what are the things we need to find out in order to ascertain whether or not there's any ethical concerns with the

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employee having held this consultancy the first thing is was this reported on a prior report

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because if this has already been vetted if this was actually screened in the filer's last report then if you go

22:00

back to those review notes you should be able to find out uh whether and to what extent uh this presented a conflict and whether or not

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the employee had any recusal requirements or other remedial things that they were asked to

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engage in and we want to find out if the employee actually sought and received ethics guidance with respect to this

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if they did it should have involved the following answers to the

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following questions did the consulting service relate to the employees duties um is the organization a prohibited

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source or vendor and did the consultancy involve representational services and i want to unpack this

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this this bullet point a little bit first the consulting services relate to the employees duties

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um here we're talking about re relationship to duties in a number of ways one of which is just the sheer the

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nature of the kind of work that the employee does for the government and the nature of the work that they were doing for the

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consulting group um was there some sort of overlap or relationship between those two things so we're looking at an actual

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close relationship between the duties performed for the government and for and in the consulting arrangement um

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concerns that we have with that are among other things just basic use of public office for private gain

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um was this employee effectively engaging in services that were making

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use of non-public information uh was it because of the employees current position

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that the consulting arrangement was even offered to the employee um so we're looking at broad considerations like that uh is the

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is the organization a prohibited source or vendor which reaches to if it is a prohibited source if it is a

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vendor for the laboratory did this employee have um interactions with this entity in the course of doing

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their job as a director of lab safety if it's a prohibited source for the agency if it's a contract

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or a vendor for labs um again is it some is it an organization that he could affect in the

23:58

performance of his duties and then ultimately did the consultancy involve any representational services

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and we ask this question because there's a separate criminal statute 18 usc section 205

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which reaches to an employees serving as an agent or otherwise representing

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third parties in matters before the government um so i think that any time we're

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dealing with a consultancy type of outside activity it's always advisable

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to ascertain whether or not there's any contemplation of the employee providing any kind of

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representational services on behalf of their outside uh client

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um to to make sure that they're not engaging in any prohibited

24:44

communications back to the government in connection with that with that service

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so reaching reaching now to the to the 208 and uh impartiality types of concerns

24:56

we would want to know if there was any kind of a 208 potential conflict of interest or certainly with impartiality

25:03

considerations during the performance of the consultancy was the employee subject to

25:08

any recusals and did they did they commit to them and did they actu actually perform or or

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honor them um and those are all sort of a look back like did these things

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actually occur uh during uh during the last year but

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presuming that that all of that is is is is copacetic everything's good and everything's fine

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we would still have to ask ourselves with respect to the current situation the employee no longer holds the

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position we would still have to ask ourselves okay does the employee have any duties that could be

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affected that could affect this outside organization or if they do then does the employee

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currently have or currently need an impartiality recusal um and if

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they're negotiating or if they have an arrangement for a prospective uh consultancy with this

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organization or any other organization then there actually would have a continuing 208 recusal obligation

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so when we look at part four if we go to the next slide and we look at part four we'll see in part four this is agreements and arrangements and this is

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where we'd want to see if the employee had a continuing understanding or continuing arrangement

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for this consultancy or some other consultancy and the employee doesn't list anything

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but i think we it's really incumbent to go back and make sure that yeah the current consultancy

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they no longer hold but make sure that if they have begun any sort of negotiations for a

26:35

future consulting arrangement we would want to see it on part four agreements and arrangements because as i said in the previous slide

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that would that would create for them a 208 a potential 208 conflict of interest

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um that might require their recusal from certain matters

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so now if patrick you want to take uh take us to the next asset absolutely uh so that the next

27:04

item reported on the form is johns hopkins university and we have an indication that this is a spouse's

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employer and this employee has done us a lot of favors here by indicating that this is an employment

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type relationship that it's uh held by his spouse and we have the name

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of of the employer johns hopkins hospital and if we think back to the agency profile and the employee

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profile and our list of stakeholders we'll note that hospitals and academic institutions were

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among the stakeholders of our organization so we at least facially have a nexus so we're going to

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want to ask some questions with the spouse's employment interest

27:48

we're interested in a few things i'm going to start with the last question first um does the spouse have any pension or

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retirement interests from the university and especially with private sector employment there are very often

28:01

other kinds of benefits that go unreported like a retirement plan maybe

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stockholding's shares so if it's the first time you're seeing a spouse's employer reported on a 450 you definitely want to

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go back and ask do they have any other attendant benefits because you may need to analyze those

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separately for a potential for conflict of interest so the authority we're most concerned

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with with spouses employment are 18 usc section 208 and 5 cfr 26 35

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502 and it really depends on the nature of the nexus so under 208 if all we have is a

28:40

spouse's employment arrangement the financial interest that's imputed to the filer

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is the spouse's financial interest and the spouse's financial interest in a pure employment

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so a no equity situation is the continued receipt of compensation and continued employment

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at the level of compensation he or she enjoys so some of the things we're going to want to know is what is the spouse's

29:03

position because if that position is in some ways contingent upon our agency's work we could have a potential problem is the

29:10

spouse's employment relate work related to laboratory work um so you know is this an area where we might

29:16

be engaged in oversight activities or inspections or investigations

29:21

of of the spouse's workplace because that could be a more significant nexus that could cause potential for conflict

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is the spouse's employer affected by the work the agency or employee performs and i think this is a very important

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question is it possible that our filer could have a direct and predictable effect on the

29:40

continued employment or on the nature of employment of the spouse because if it is there's a potential for

29:45

an 18 usc section 208 conflict and even uh if there's not a financial interest we

29:51

could also want to think about the potential for an appearance concern because our filer does have a covered

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relationship under subpart e of the standards uh with his spouse's employer

30:02

so we may want to put in place a recusal here to make sure that our filer is not participating in

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matters that would affect his spouse's continued employment or involve his spouse's employer

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so that brings us to the next entry on the form which is ira vanguard healthcare etf

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and again our filer has done us a big favor oftentimes with defined contribution

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plans like iras 401ks 403 bs filers will give us the account but they

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won't tell us what is within the account and when we're analyzing these for conflicts of interest we're only

30:43

concerned with the underlying holdings so that it's a tax deferred account doesn't really help us identify

30:49

conflicts of interest what does help us is to know what's held within the tax deferred account

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so in this case our filer has indicated that uh what is in the account is the vanguard healthcare

31:02

exchange traded fund so when we see a fund some of the

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questions we need to ask are is it a mutual fund so the threshold question is does it meet the definition

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of mutual fund and this is it increasingly important because something we've been seeing

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a lot of lately are managed accounts which are things that look like funds but are actually accounts

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held directly for the employee so if you see something and you can't decide if it's a fund or a

31:31

managed account when you go look it up online you're going to have to go back to the filer and find out

31:37

the next question is whether it's diversified or sector diversified funds do not need to be

31:42

reported on the og form 450 and that's not just a reporting requirement it's because they're exempt

31:48

from coverage under 18 usc section 208 sector funds are not we do have a de

31:54

minimis exemption in 5 cfr 2640 for sector funds but we're gonna have to

32:00

find out a second question and that question is how much is the fund valued if we have a nexus and if it

32:06

is indeed a sector fund so that's sort of our third question here if it's a sector fund

32:11

does it conflict and in this case it's a health care fund so it seems that there is a nexus

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between this fund and the work of our organization so at least facially uh there is a nexus so we're going to

32:24

probably want to find out first whether it's a sector fund or a diversified fund and if we find out it's

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a sector fund we're going to need to find out what the value is so that we can find out and determine if it qualifies for one of

32:37

the de minimis exemptions at 5 cfr 2640. so whenever you see one

32:42

of these this should be a general process is it a fund basically confirm it's not an account

32:47

is it diversified or sector if it's sector is there a conflict and if there's a potential nexus is

32:53

there an exemption we could rely upon so here we have a little information

32:59

about the fund this is the investment strategy and this is how we determine if a fund is indeed a sector or diversified fund

33:07

and what we're looking for is the stated policy of the fund does the fund say it invests in a single

33:14

industry in this in the bonds of a single state or one country outside of the united

33:19

states so if we have a stated policy of focusing in one of those categories

33:25

we know we have a sector fund and here it looks like we probably do we see that they

33:31

have uh an emphasis on buying health care stocks as we would expect from the name

33:38

of the fund but sometimes it can be a little bit difficult to find out if something is indeed a sector fund

33:44

or if it's diversified for example defining us a single industry so og has issued some guidance and i'd

33:51

encourage you to keep this uh this diagram uh with your copy of the

33:56

confidential financial disclosure of your guide because it's very helpful in determining what is and is not a

34:02

diversified versus sector fund and that's diagram diagram00-030

34:08

and so it helps us to kind of understand our basic approach uh so we're looking for relatedness and

34:14

overlapping interests in the members of the sector that we see in the fund's description

34:21

so we're looking for the types of companies to be part of one industry or business sector and one

34:27

of the things we look to to find out if this is true is if they share a common regulatory environment or if government decisions affecting one

34:33

type of company would be expected to affect the other given their independence interdependence

34:39

or competition with each other so here it seems that that's probably the case with this fund

34:45

and indeed we have some particular guidance later on in this advisory dealing with health care sector funds

34:53

and it seems that if we take a close look at this guidance that we will find we're probably dealing with a sector fund

34:58

so we're going to want to go to that fourth step in our process which is to ask our filer what is the

35:04

value of this holding so that we can determine whether or not that holding qualifies for one of the

35:10

minimus exemptions at five cfr 2640. so that's your general process is it a

35:15

fund make sure it's not an account is it diversified or is it a sector fund if it's a sector fund

35:21

is there a nexus if there's a nexus does an exemption apply and if you follow those steps uh you'll

35:27

be well uh well prepared to review and analyze potential conflicts arising from mutual funds

35:37

okay so we've come to our final um uh holding that's listed on part one

35:44

and it's the american chemical society

35:50

and again what as draft entry we're going to want to ask

35:56

effectively the same questions which is what is the nature of this interest

36:01

who holds it and then generally speaking is there any sort of nexus is there any sort of connection

36:07

between this organization and the employees duties so

36:15

on this slide i use you'll see i pulled up a screenshot of the american chemical society now the american chemical

36:20

society as a professional society um and so as a general proposition they

36:26

are going to have um interests in uh in the laboratory safety

36:31

but if you look on their site i actually found a discreet and uh specifically articulated interest in

36:38

chemical and laboratory safety and it indicates here that the american chemical society advocates for the safe

36:45

practice of chemistry across disciplines um in every organization we engage with

36:50

like-minded professionals and entities to provide tools to foster a culture of safety in your

36:57

classroom campus or lab so they actually have a chemical and laboratory safety functionality

37:04

um so clearly it's something that there there's a there is some apparent

37:13

work that our employee performs so as as was the case before uh we have to

37:19

use other parts of the form to help us inform what we're seeing on part one so if we look at part three as we have

37:25

here on this slide for outside positions we see he does list the american chemical society

37:31

as a position and he indicates that he is an instructor with this professional society

37:39

if we further looking on the next slide if we look at part four um he further gives us information about

37:46

uh his agreements and arrangements with the american chemical society he lists that he has an agreement to

37:53

teach laboratory a laboratory safety course in april of 2021 and that he entered this agreement in

38:00

october of 2020. so what are some questions that we have

38:06

about this um it would appear from part three that the employee is currently employed

38:13

by the american chemical society because he lists it as a position and it appears as if he's already

38:19

received compensation from them because he lists them on part one um and so we have to ask ourselves is he

38:26

currently an employee what is his status vis-a-vis the american chemical society

38:32

um and again as we was the case with bioref you know do we have any evidence that he

38:38

already sought and received ethics guidance with respect to whatever position he has encumbered with them um

38:44

prior to his his submitting this this year's annual report

38:49

um obviously we're going to want to know what services are is the employee providing as an

38:55

instructor and to whom is he uh the instruction um

39:02

so one of the questions we would want to ask with respect to these services as instructor is does this qualify as teaching

39:10

presumably it would when you think of instructor i think of it being a teaching position

39:15

because we do have the restrictions in the standards of conduct at 5cfr 2635.807

39:22

these restrictions reach to compensation for teaching speaking or writing that relates to the employee's official

39:29

duties and there are a variety of ways that that teaching speaking and writing

39:34

can relate to an employee's official duties certainly the subject matter of the teaching is one way

39:40

that the the the teaching could be related um but there are also other definitions

39:46

such as whether or not the entity that is providing the compensation um has interests that could be

39:53

substantially affected by the performance or non-performance of the employees duties so for example is does the employee have

39:59

the ability to substantially affect the interests of the american chemical society that would be another relatedness test

40:05

for purposes of the restrictions at 807. now as many of you may

40:10

be familiar with um there is an exception for teaching um in 807

40:17

that permits under certain circumstances an employee to teach a course that's related to their

40:24

duties um uh but the stipulations are that uh the course has to be part of the

40:31

regularly established curriculum of an institution of higher education an elementary school a secondary school

40:39

or a program of education or training that's sponsored and funded by the federal government or by a state or local government

40:46

the american chemical society is not to my knowledge an institution of higher education and

40:52

uh presumably it would not be a program of education or training that was sponsored and funded by the federal government or

40:58

a state or local government so 807 might be a real concern for our

41:03

employee if the instruction that they're providing is in any way related

41:09

uh to their official duties um we would want to know whether or not the american chemical society was a prohibited source

41:16

for our organization because we would want our employee to

41:21

uh be recused from any matters that would involve or affect the american chemical

41:27

society so for example if uh the american chemical society regularly sponsors conferences and

41:34

events to which it includes government uh organizations

41:39

and our employee for example would not be permitted to approve that

41:45

an employee's participation in an american chemical society sponsored conference

41:51

and approved the payment of a fee a conference fee or some other uh

41:58

some other source of financial interest that the american chemical society would have so that would be an instance where

42:05

the interests of the american chemical society could be affected by our employees official duties

42:12

so as a general proposition we need to know whether and to what extent the american chemical society could be

42:18

affected by the employees duties but most particularly we're going to want to make sure that

42:24

if the employee is receiving compensation for engaging in teaching for the american chemical

42:30

society that they're doing so in compliance with the standards of conduct particularly 26

42:35

35.807

42:41

so that brings us to the last part of the form part five and if you recall from

42:48

earlier we noted on the cover page that our filer has

42:55

indicated that there were reportable gifts but now we have a bit of a conflict which suggests that there are

43:01

no actual gifts reported on the form so this is one place where keeping good records might help us

43:08

uh quite a lot we could go back into our notes and we may learn that

43:15

in fact our filer had received advice about gifts and we could go back to them and ask them about specific instances in

43:21

which they've received gift advice we might also if we don't have any such

43:27

records go back and ask particularly about gifts related to bioraft or the american

43:32

chemical society and the reason for that is that's typically where we see gifts that are reportable

43:37

uh are associated with outside activities so those may be travel or events invitations things like that

43:43

so that might be a place to begin your inquiry with the employee because you are going to have to determine

43:50

definitively which is correct uh is the cover page of the form correct or is part five correct and if the cover

43:56

page is correct and there are reportable gifts you'll want to analyze those under subpart b of the standards

44:02

to make sure that they were properly accepted and if not you may have to ask the employee to take some remedial

44:07

action i think cheryl's going to take us

44:13

through to the end here yes absolutely so to recap uh the primary objective

44:19

of our exercise today was to assist you in issue spotting based on

44:25

information that you have both about the filer's duties and the information that the filer provides for you

44:30

on their form we we would do that because we want to emphasize

44:36

the importance of your substantive review and to reinforce the notion that anytime

44:42

you're engaging in any time type of identification of actual or potential conflicts of

44:48

interest or other ethics concerns it's extremely important that you reduce those

44:54

uh observations and those analyses to writing that you take copious reviewers notes

45:00

that you know what kinds of questions to ask filers about information that's

45:06

disclosed on the form to better assist you in making these substantive reviews

45:11

um and that you know what kind of information to request a filers once you've made those

45:17

substantive determinations for example we disclosed various things on the forum that we thought might be somewhat

45:23

problematic or that certainly were worth following up on um and whenever you do determine if you

45:29

were to determine that there was an actual potential conflict of interest you should

45:34

again reduce those to some sort of cautionary memo that you issue to the filer giving them a heads up about things that

45:40

you identified or if you actually are requiring the filer to do something as a result of something you found on

45:46

the forum you may want to consider issuing them an ethics agreement where they again agree

45:51

in writing to commit to the remedial steps that you're requiring of them

45:56

understanding at the end of the day you cannot sign and date the report as the

46:02

certifier until such time as anything that you've identified on the form that presents an

46:08

actual or potential conflict has in some way shape or form then remediated

46:15

we know that that the substantive review is is the critical part of the

46:21

review but we also know that there are technical aspects to the review and that it's important for you to have

46:27

a resource where that it will assist you in helping you to identify not only what you're seeing on the on

46:34

the report but maybe better know what you should be seeing on the report in the way of technical

46:40

uh disclosure so again we advocate very strongly that you make the oge form

46:47

450 review guide the standard uh resource that you use

46:53

for all purposes and that if you are not currently using it that you become very familiar with it because it covers

46:59

um all of the technical aspects of filing as well as programmatic aspects

47:05

for how you should run your your 450 review system we encourage you if you have any

47:14

questions about today's broadcast or generally about a 450 filing as you are engaging in your

47:20

450 review season that you contact your og desk officer it's one of the best resources that og

47:26

has to offer you by way of direct assistance we've also provided you on our website with respect

47:32

to today's exercise we've given you a an answer key as it were to the uh to the the

47:40

debrief that we gave you today so we hope that um that you found today helpful and

47:46

again we encourage you to use all of the resources that are available in the institute for ethics and government and

47:52

we thank you very much for your time

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