Office of Government Ethics § 2638.402

forth in §2638.303, he or she shall con-
tact the Office of Government Ethics
concerning the request before referring
the request to the Office. If after such
consultation the Office of Government
Ethics determines that the request
should be the subject of a formal advis-
sory opinion, the designated agency
ethics official shall notify the person
making the request of that determina-
tion and request the person's permis-
sion to refer the request to the Office
of Government Ethics.

(b) If the Director receives a request
for an opinion which does not fulfill
the criteria set forth in §2638.303, he or
she may:

(1) Furnish informational assistance
to the person as provided in
§2638.305(a), or
(2) Refer the request to the appro-
priate designated agency ethics offi-
cial.

(c) In all instances covered by para-
graphs (a) and (b) of this section, a re-
ferral will not be made in the case of
questions regarding possible future em-
ployment plans of an individual mak-
ing the request unless he or she is first
notified and gives his or her consent or
the request itself indicates that such a
referral may be made.

§2638.313 Agency opinions.

If the designated agency ethics official
issues a written opinion con-
cerning the application of 18 U.S.C. 202–
209, he or she shall transmit a copy of
that opinion to the Office of Govern-
ment Ethics.

Subpart D—Correction of Execu-
tive Branch Agency Ethics
Programs

SOURCE: 55 FR 1666, Jan. 18, 1990, unless
otherwise noted.

§2638.401 In general.

The Director of the Office of Govern-
ment Ethics has authority under sub-
sections 402(b)(9) and 402(f)(1) of the
Ethics in Government Act to order ac-
tion to correct deficiencies in agency
ethics programs. These procedures are
intended to be used to correct defi-
cencies in agency ethics programs
that are not being addressed ade-
quately by the agency. They are not in-
tended to be used to deal with cases in-
volving individual employees or former
employees. See subpart E of this part.
For purposes of this section, an agency
ethics program shall include those
matters that are the responsibility of
agency heads and designated agency
ethics officials under subpart B of this
part and shall include the requirements
under part 2634 of this chapter and part
735 of this title to establish public and
nonpublic financial disclosure systems.
In implementing these procedures, the
Director may use any authority con-
tained in the Ethics Act.

§2638.402 Corrective orders.

(a) Notice. Where the Director has in-
formation indicating that an agency
ethics program is not in full compli-
ance with the requirements set forth in
applicable statutes or regulations, the
Director may issue a Notice of Defi-
ciency to the designated agency ethics
official and request an agency report
under paragraph (b) of this section.

(b) Agency report. Within such time as
may be set forth in the Notice of Defi-
ciency, the designated agency ethics
official shall provide a written report
to the Director that shall include rel-
vant information about the agency’s
ethics program. The ethics official’s re-
port may include:

(1) Information establishing that
there is no deficiency;
(2) An explanation of how any defi-
ciency is being corrected; or
(3) A plan for correcting any defi-
ciency within a reasonable period of
time.

(c) Director’s determination. The Direc-
tor will make a determination based on
the agency report.

(1) If the Director determines that
there is no deficiency, the designated
agency ethics official will be so noti-
(2) If the Director determines that
appropriate steps are being taken or
that the agency has presented an ade-
quate plan for correcting the defi-
ciency, the Director will so notify the
designated agency ethics official and,
in consultation with the designated
§ 2638.403 Agency compliance.

Within such time as may be set forth in the order, the agency head shall file a report with the Director detailing the corrective action taken. If corrective action cannot be accomplished within that time, the agency head shall submit a plan of corrective action for approval by the Director providing for appropriate status reports and notification of compliance. In either case, if the agency report or plan is deemed satisfactory, the Director will so inform the agency head. If the agency report or plan is insufficient, but only in minor respects, the Director may inform the agency head of the adjustments needed to bring the report or plan into compliance and a timeframe therefor; otherwise, the procedures under § 2638.404 of this subpart will be invoked.


If the agency fails to comply with an order issued under § 2638.402(d), the Director shall:
(a) Notify the head of the agency of intent to furnish a report of noncompliance to the President and the Congress;
(b) Provide the agency 14 calendar days within which to furnish written comments for submission with the report of noncompliance; and
(c) Report the agency’s noncompliance to the President and to the Congress.

Subpart E—Corrective and Remedial Action in Cases Involving Individual Executive Agency Employees

Source: 55 FR 1667, Jan. 18, 1990, unless otherwise noted.

§ 2638.501 In general.

(a) Authority. The Director of the Office of Government Ethics has authority under subsections 402(b)(9) and 402(f)(2) of the Act to order corrective and remedial action with respect to individual employees to bring about compliance with applicable ethics provisions. Nothing in this subpart relieves an agency of its primary responsibility to ensure compliance.

(b) Definitions. For the purpose of this subpart:
(1) Ethics provision includes any rule, regulation or executive order relating to conflicts of interest or standards of conduct in the executive branch. The term excludes any statute that is contained in title 18 of the United States Code or which imposes a criminal penalty as well as any statute made applicable to a specific agency that mandates or proscribes conduct not otherwise the subject of Governmentwide standards. It excludes any matter covered by sections 101 (k) and (m) of Executive Order 12674 that are within the cognizance of agency Inspectors General, the Office of Special Counsel or the Equal Employment Opportunity Commission.
(2) Employee means any officer or employee, including a special Government employee, covered by any of the provisions contained in part 735 of this title.
(3) Head of an agency, in the case of an agency that is headed by a board, committee or other group of individuals, refers to the employee’s appointing authority.
(4) Corrective action means any action necessary to remedy a violation of an ethics provision including, but not limited to, recusal, divestiture, termination of an activity, restitution, or