

enters into a contract to write a book of fictional short stories. Royalties based on actual sales of the book after publication are investment income attributable to the property interest he retains in the book and, as such, are neither "outside earned income" nor "compensation."

(c) *Receive* means that the employee has the right to exercise dominion and control over the compensation or outside earned income and direct its subsequent use. Compensation or outside earned income is received by an employee if it is for his conduct and:

(1) If it is paid to any other person on the basis of designation, recommendation or other specification by the employee; or

(2) If, with the employee's knowledge and acquiescence, it is paid to his parent, sibling, spouse, child or dependent relative.

Compensation that is prohibited by § 2636.305 through § 2636.307 of this subpart is received while an individual is an employee if it is for conduct by him that occurs while an employee, even though actual payment may be deferred until after Federal employment has terminated. Also, compensation or outside earned income donated to a charitable organization is received by the employee.

[56 FR 1723, Jan. 17, 1991, as amended at 63 FR 43069, Aug. 12, 1998; 64 FR 2422, Jan. 14, 1999; 72 FR 16987, Apr. 6, 2007]

§ 2636.304 The 15 percent limitation on outside earned income.

(a) *Limitation applicable to individuals who are covered noncareer employees on January 1 of any calendar year.* A covered noncareer employee may not, in any calendar year, receive outside earned income attributable to that calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under 5 U.S.C. 5313, as in effect on January 1 of such calendar year. The effective date of a change in the rate for level II of the Executive Schedule shall be the date on which a new rate of basic pay for level II first becomes applicable to any level II position.

NOTE: Notwithstanding the 15 percent limitation described in this section, a covered noncareer employee who is a Presidential appointee to a full-time noncareer position is

prohibited by section 102 of Executive Order 12674, as amended, from receiving *any* outside earned income for outside employment or any other activity performed during that Presidential appointment.

Example 1. Notwithstanding that the compensation he will receive would not exceed 15 percent of the rate for level II of the Executive Schedule, a covered noncareer employee of the Department of Energy may not receive any compensation for teaching a university course unless he first receives the authorization required by § 2636.307 of this subpart.

(b) *Limitation applicable to individuals who become covered noncareer employees after January 1 of any calendar year.* The outside earned income limitation that applies to an individual who becomes a covered noncareer employee during a calendar year shall be determined on a pro rata basis. His outside earned income while so employed in that calendar year shall not exceed 15 percent of the annual rate of basic pay for level II of the Executive Schedule in effect on January 1 of the calendar year divided by 365 and multiplied by the number of days during that calendar year that he holds the covered noncareer position.

Example 1. A former college professor received an appointment to a noncareer Senior Executive Service position on November 1, 1991. The rate of basic pay in effect for Executive Level II on January 1, 1991 was \$125,100. For the 61 day period from November 1, 1991 through December 31, 1991, the amount of outside income he may earn is limited to \$3,129. That amount is determined as follows:

Step 1. The rate of basic pay for Executive Level II as in effect on January 1 of that year (\$125,100) is divided by 365. That quotient is \$342;

Step 2. The dollar amount determined by Step 1 (\$342) is then multiplied by the 61 days the employee held the covered noncareer position. That product is \$20,862;

Step 3. The dollar amount determined by Step 2 (\$20,862) is multiplied by .15 or 15 percent. The product (\$3,129) is the maximum outside earned income the employee may have in the particular year attributable to the period of his service in a covered noncareer position.

(c) *Computation principle.* For purposes of any computation required by this section, any amount of \$.50 or more shall be rounded up to the next full dollar and any amount less than \$.50 shall be rounded down to the next full dollar.

(d) *Year to which outside earned income is attributable.* Regardless of when it is paid, outside earned income is attributable to the calendar year in which the services for which it is paid were provided.

§ 2636.305 Compensation and other restrictions relating to professions involving a fiduciary relationship.

(a) *Applicable restrictions.* A covered noncareer employee shall not:

(1) Receive compensation for:

(i) Practicing a profession which involves a fiduciary relationship; or

(ii) Affiliating with or being employed to perform professional duties by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship; or

(2) Permit his name to be used by any firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship.

Example 1. A covered noncareer employee of the White House Office who is an attorney may not receive compensation for drafting a will for her friend. She may, however, participate in her bar association's pro bono program by providing free legal services for the elderly, provided her participation in the program is otherwise proper. For example, 18 U.S.C. 205 would prohibit her from representing her pro bono client in a hearing before the Social Security Administration.

Example 2. An accountant named C.B. Debit who is offered a covered noncareer appointment must terminate his partnership in the accounting firm of Delight, Waterhose and Debit upon appointment. Because his deceased father, J.R. Debit, was the founding partner for whom the firm is named, the name Debit need not be deleted from the firm's name. However, the name C.B. Debit may not appear on the firm's letterhead after the individual enters on duty as a covered noncareer employee.

(b) *Definitions.* For purposes of this section:

(1) *Profession* means a calling requiring specialized knowledge and often long and intensive preparation including instruction in skills and methods as well as in the scientific, historical or scholarly principles underlying such skills and methods. It is characteristic of a profession that those in the profession, through force of organization or concerted opinion, establish and main-

tain high standards of achievement and conduct, and commit its practitioners to continued study of the field. Consulting and advising with respect to subject matter that is generally regarded as the province of practitioners of a profession shall be considered a profession.

(2) *Profession which involves a fiduciary relationship* means a profession in which the nature of the services provided causes the recipient of those services to place a substantial degree of trust and confidence in the integrity, fidelity and specialized knowledge of the practitioner. Such professions are not limited to those whose practitioners are legally defined as fiduciaries and include practitioners in such areas as law, insurance, medicine, architecture, financial services and accounting. A covered noncareer employee who is uncertain whether a particular field of endeavor is a profession which involves a fiduciary relationship may request an advisory opinion under §2636.103.

Example 1. In view of the standards of the profession which require a licensed real estate broker to act in the best interests of his clients, the selling of real estate by a licensed broker involves the practice of a profession involving a fiduciary relationship.

Example 2. A covered noncareer employee may receive the customary fee for serving as the executor of his mother's estate, provided he does not violate the applicable limitation on the amount of outside earned income he may receive. Although the executor of an estate has fiduciary obligations, serving as an executor in these circumstances does not involve the practice of a profession and, therefore, is not prohibited. He could not, however, serve for compensation as attorney for the estate.

[56 FR 1723, Jan. 17, 1991, as amended at 58 FR 69176, Dec. 30, 1993]

§ 2636.306 Compensation restriction applicable to service as an officer or member of a board.

(a) *Applicable restriction.* A covered noncareer employee shall not receive compensation for serving as an officer or member of the board of any association, corporation or other entity. Nothing in this section prohibits uncompensated service with any entity.

(b) *Definition.* For purposes of this section, the phrase "association, corporation or other entity" is not limited

to for-profit entities, but includes non-profit entities, such as charitable organizations and professional associations, as well as any unit of state or local government.

Example 1. A covered noncareer employee of the Environmental Protection Agency may not serve with compensation on the board of directors of his sister's closely-held computer software corporation.

Example 2. A covered noncareer employee of the Department of the Navy may serve without compensation as an officer of a charitable organization that operates a hospice.

Example 3. A covered noncareer employee of the Coast Guard appointed to serve as a member of the board of education of the county in which she is a resident may not receive compensation for that service.

§ 2636.307 Requirement for advance authorization to engage in teaching for compensation.

(a) *Authorization requirement.* A covered noncareer employee may receive compensation for teaching only when specifically authorized in advance by the designated agency ethics official.

(b) *Definition.* For purposes of this section "teaching" means any activity that involves oral presentation or personal interaction, the primary function of which is to instruct or otherwise impart knowledge or skill. It is not limited to teaching that occurs in a formal setting, such as a classroom, but extends to instruction on an individual basis or in an informal setting.

(c) *Request for authorization.* An employee may request authorization to engage in compensated teaching activities by forwarding a written request to the designated agency ethics official. The request shall describe the employee's official duties, the subject matter of the teaching activity, the entity sponsoring the course, and the student, class or audience to be taught. In addition, it shall set forth the terms of the compensation arrangement and identify the source of the payment. The request shall be accompanied by any contract or employment agreement and any literature describing, publicizing or otherwise promoting the class, classes or course.

(d) *Standard for authorization.* Compensated teaching may be approved by the designated agency ethics official only when:

(1) The teaching will not interfere with the performance of the employee's official duties or give rise to an appearance that the teaching opportunity was extended to the employee principally because of his official position;

(2) The employee's receipt of compensation does not violate any of the limitations and prohibitions on honoraria, compensation or outside earned income contained in this part; and

(3) Neither the teaching activity nor the employee's receipt of compensation therefor will violate applicable standards of conduct or any statute or regulation related to conflicts of interests.

(e) *Determination and authorization.* The determination by the designated agency ethics official to grant or deny authorization to engage in teaching for compensation shall be in writing and shall be final. The authority of the designated agency ethics official to authorize compensated teaching may not be delegated to any person other than the alternate designated agency ethics official described in § 2638.202(b).

PART 2638— EXECUTIVE BRANCH ETHICS PROGRAM

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SOURCE: 81 FR 76273, Nov. 2, 2016, unless otherwise noted.

Subpart A—Mission and Responsibilities

§ 2638.101 Mission.

(a) *Mission.* The primary mission of the executive branch ethics program is

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to prevent conflicts of interest on the part of executive branch employees.

(b) *Breadth.* The executive branch ethics program works to ensure that public servants make impartial decisions based on the interests of the public when carrying out the governmental responsibilities entrusted to them, serve as good stewards of public resources, and loyally adhere to the Constitution and laws of the United States. In the broadest sense of the term, “conflicts of interest” stem from financial interests; business or personal relationships; misuses of official position, official time, or public resources; and the receipt of gifts. The mission is focused on both conflicts of interest and the appearance of conflicts of interest.

(c) *Conflicts-based program.* The executive branch ethics program is a conflicts-based program, rather than a solely disclosure-based program. While transparency is an invaluable tool for promoting and monitoring ethical conduct, the executive branch ethics program requires more than transparency. This program seeks to ensure the integrity of governmental decision making and to promote public confidence by preventing conflicts of interest. Taken together, the systems in place to identify and address conflicts of interest establish a foundation on which to build and sustain an ethical culture in the executive branch.

§ 2638.102 Government ethics responsibilities of employees.

Consistent with the fundamental principle that public service is a public trust, every employee in the executive branch plays a critical role in the executive branch ethics program. As provided in the Standards of Conduct at part 2635 of this chapter, employees must endeavor to act at all times in the public's interest, avoid losing impartiality or appearing to lose impartiality in carrying out official duties, refrain from misusing their offices for private gain, serve as good stewards of public resources, and comply with the requirements of government ethics laws and regulations, including any applicable financial disclosure requirements. Employees must refrain from participating in particular matters in

which they have financial interests and, pursuant to §2635.402(f) of this chapter, should notify their supervisors or ethics officials when their official duties create the substantial likelihood of such conflicts of interest. Collectively, the charge of employees is to make ethical conduct the hallmark of government service.

§ 2638.103 Government ethics responsibilities of supervisors.

Every supervisor in the executive branch has a heightened personal responsibility for advancing government ethics. It is imperative that supervisors serve as models of ethical behavior for subordinates. Supervisors have a responsibility to help ensure that subordinates are aware of their ethical obligations under the Standards of Conduct and that subordinates know how to contact agency ethics officials. Supervisors are also responsible for working with agency ethics officials to help resolve conflicts of interest and enforce government ethics laws and regulations, including those requiring certain employees to file financial disclosure reports. In addition, supervisors are responsible, when requested, for assisting agency ethics officials in evaluating potential conflicts of interest and identifying positions subject to financial disclosure requirements.

§ 2638.104 Government ethics responsibilities of agency ethics officials.

(a) *Appointment of a Designated Agency Ethics Official.* Each agency head must appoint a Designated Agency Ethics Official (DAEO). The DAEO is the employee with primary responsibility for directing the daily activities of the agency's ethics program and coordinating with the Office of Government Ethics.

(b) *Qualifications necessary to serve as DAEO.* The following are necessary qualifications of an agency's DAEO:

(1) The DAEO must be an employee at an appropriate level in the organization, such that the DAEO is able to coordinate effectively with officials in relevant agency components and gain access to the agency head when necessary to discuss important matters related to the agency's ethics program.

(2) The DAEO must be an employee who has demonstrated the knowledge, skills, and abilities necessary to manage a significant agency program, to understand and apply complex legal requirements, and to generate support for building and sustaining an ethical culture in the organization.

(3) On an ongoing basis, the DAEO must demonstrate the capacity to serve as an effective advocate for the executive branch ethics program, show support for the mission of the executive branch ethics program, prove responsive to the Director's requests for documents and information related to the ethics program, and serve as an effective liaison with the Office of Government Ethics.

(4) In any agency with 1,000 or more employees, any DAEO appointed after the effective date of this regulation must be an employee at the senior executive level or higher, unless the agency has fewer than 10 positions at that level.

(c) *Responsibilities of the DAEO.* Acting directly or through other officials, the DAEO is responsible for taking actions authorized or required under this subchapter, including the following:

(1) Serving as an effective liaison to the Office of Government Ethics;

(2) Maintaining records of agency ethics program activities;

(3) Promptly and timely furnishing the Office of Government Ethics with all documents and information requested or required under subpart B of this part;

(4) Providing advice and counseling to prospective and current employees regarding government ethics laws and regulations, and providing former employees with advice and counseling regarding post-employment restrictions applicable to them;

(5) Carrying out an effective government ethics education program under subpart C of this part;

(6) Taking appropriate action to resolve conflicts of interest and the appearance of conflicts of interest, through recusals, directed divestitures, waivers, authorizations, reassignments, and other appropriate means;

(7) Consistent with §2640.303 of this chapter, consulting with the Office of Government Ethics regarding the

issuance of waivers pursuant to 18 U.S.C. 208(b);

(8) Carrying out an effective financial disclosure program, by:

(i) Establishing such written procedures as are appropriate relative to the size and complexity of the agency’s financial disclosure program for the filing, review, and, when applicable, public availability of financial disclosure reports;

(ii) Requiring public and confidential filers to comply with deadlines and requirements for financial disclosure reports under part 2634 of this chapter and, in the event of noncompliance, taking appropriate action to address such noncompliance;

(iii) Imposing late fees in appropriate cases involving untimely filing of public financial disclosure reports;

(iv) Making referrals to the Inspector General or the Department of Justice in appropriate cases involving knowing and willful falsification of financial disclosure reports or knowing and willful failure to file financial disclosure reports;

(v) Reviewing financial disclosure reports, with an emphasis on preventing conflicts of interest;

(vi) Consulting, when necessary, with financial disclosure filers and their supervisors to evaluate potential conflicts of interest;

(vii) Timely certifying financial disclosure reports and taking appropriate action with regard to financial disclosure reports that cannot be certified; and

(viii) Using the information disclosed in financial disclosure reports to prevent and resolve potential conflicts of interest.

(9) Assisting the agency in its enforcement of ethics laws and regulations when agency officials:

(i) Make appropriate referrals to the Inspector General or the Department of Justice;

(ii) Take disciplinary or corrective action; and

(iii) Employ other means available to them.

(10) Upon request of the Office of Inspector General, providing that office with ready and active assistance with regard to the interpretation and application of government ethics laws and

regulations, as well as the procedural requirements of the ethics program;

(11) Ensuring that the agency has a process for notifying the Office of Government Ethics upon referral, made pursuant to 28 U.S.C. 535, to the Department of Justice regarding a potential violation of a conflict of interest law, unless such notification would be prohibited by law;

(12) Providing agency officials with advice on the applicability of government ethics laws and regulations to special Government employees;

(13) Requiring timely compliance with ethics agreements, pursuant to part 2634, subpart H of this chapter;

(14) Conducting ethics briefings for certain agency leaders, pursuant to §2638.305;

(15) Prior to any Presidential election, preparing the agency’s ethics program for a potential Presidential transition; and

(16) Periodically evaluating the agency’s ethics program and making recommendations to the agency regarding the resources available to the ethics program.

(d) *Appointment of an Alternate Designated Agency Ethics Official.* Each agency head must appoint an Alternate Designated Agency Ethics Official (ADAEO). The ADAEO serves as the primary deputy to the DAEO in the administration of the agency’s ethics program. Together, the DAEO and the ADAEO direct the daily activities of an agency’s ethics program and coordinate with the Office of Government Ethics. The ADAEO must be an employee who has demonstrated the skills necessary to assist the DAEO in the administration of the agency’s ethics program.

(e) *Program support by additional ethics officials and other individuals.* Subject to approval by the DAEO or the agency head, an agency may designate additional ethics officials and other employees to assist the DAEO in carrying out the responsibilities of the ethics program, some of whom may be designated “deputy ethics officials” for purposes of parts 2635 and 2636 of this chapter. The agency is responsible for ensuring that these employees have the skills and expertise needed to perform their assigned duties related to the

ethics program and must provide appropriate training to them for this purpose. Although the agency may appoint such officials as are necessary to assist in carrying out functions of the agency's ethics program, they will be subject to the direction of the DAEO with respect to the functions of the agency's ethics program described in this chapter. The DAEO retains authority to make final decisions regarding the agency's ethics program and its functions, subject only to the authority of the agency head and the Office of Government Ethics.

(f) *Ethics responsibilities that may be performed only by the DAEO or ADAEO.* In addition to any items reserved for action by the DAEO or ADAEO in other parts of this chapter, only the DAEO or ADAEO may carry out the following responsibilities:

(1) Request approval of supplemental agency regulations, pursuant to § 2635.105 of this chapter;

(2) Recommend a separate component designation, pursuant to § 2641.302(e) of this chapter;

(3) Request approval of an alternative means for collecting certain public financial disclosure reports, pursuant to § 2638.204(c);

(4) Request determinations regarding public reporting requirements, pursuant to §§ 2634.202(c), 2634.203, 2634.205, and 2634.304(f) of this chapter;

(5) Make determinations, other than exceptions in individual cases, regarding the means the agency will use to collect public or confidential financial disclosure reports, pursuant to §§ 2638.204 and 2638.205;

(6) Request an alternative procedure for filing confidential financial disclosure reports, pursuant to § 2634.905(a) of this chapter;

(7) Request a formal advisory opinion on behalf of the agency or a prospective, current, or former employee of that agency, pursuant to § 2638.209(d); and

(8) Request a certificate of divestiture, pursuant to § 2634.1005(b) of this chapter.

§ 2638.105 Government ethics responsibilities of lead human resources officials.

(a) The lead human resources official, as defined in § 2638.603, acting directly or through delegees, is responsible for:

(1) Promptly notifying the DAEO of all appointments to positions that require incumbents to file public or confidential financial disclosure reports, with the notification occurring prior to appointment whenever practicable but in no case occurring more than 15 days after appointment; and

(2) Promptly notifying the DAEO of terminations of employees in positions that require incumbents to file public financial disclosure reports, with the notification occurring prior to termination whenever practicable but in no case occurring more than 15 days after termination.

(b) The lead human resources official may be assigned certain additional ethics responsibilities by the agency.

(1) If an agency elects to assign such responsibilities to human resources officials, the lead human resources official is responsible for coordinating, to the extent necessary and practicable, with the DAEO to support the agency's ethics program;

(2) If the lead human resources official is responsible for conducting ethics training pursuant to subpart C of this part, that official must follow the DAEO's directions regarding applicable requirements, procedures, and the qualifications of any presenters, consistent with the requirements of this chapter;

(3) If the lead human resources official is responsible for issuing the required government ethics notices in written offers of employment, pursuant to § 2638.303, or providing supervisory ethics notices, pursuant to § 2638.306, that official must comply with any substantive and procedural requirements established by the DAEO, consistent with the requirements of this chapter; and

(4) To the extent applicable, the lead human resources official is required to provide the DAEO with a written summary and confirmation regarding procedures for implementing certain requirements of subpart C of this part by

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January 15 each year, pursuant to § 2638.310.

(c) Nothing in this section prevents an agency head from delegating the duties described in paragraph (b) of this section to another agency official. In the event that an agency head delegates the duties described in paragraph (b) of this section to an agency official other than the lead human resources official, the requirements of paragraph (b) of this section will apply to that official.

§ 2638.106 Government ethics responsibilities of Inspectors General.

An agency's Inspector General has authority to conduct investigations of suspected violations of conflict of interest laws and other government ethics laws and regulations. An Inspector General is responsible for giving due consideration to a request made pursuant to section 403 of the Ethics in Government Act of 1978 (the "Act") by the Office of Government Ethics for investigation of a possible violation of a government ethics law or regulation. Inspectors General provide the Office of Government Ethics notification of certain referrals to the Department of Justice, pursuant to § 2638.206. Inspectors General may consult with the Director for legal guidance on the application of government ethics laws and regulations, except that the Director may not make any finding as to whether a provision of title 18, United States Code, or any criminal law of the United States outside of such title, has been or is being violated. Nothing in this section will be construed to limit or otherwise affect the authority of an Inspector General under section 6 of the Inspector General Act of 1978, as amended, including the authority under section 6(a)(2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable.

§ 2638.107 Government ethics responsibilities of agency heads.

The agency head is responsible for, and will exercise personal leadership in, establishing and maintaining an effective agency ethics program and fos-

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tering an ethical culture in the agency. The agency head is also responsible for:

(a) Designating employees to serve as the DAEO and ADAEO and notifying the Director in writing within 30 days of such designation;

(b) Providing the DAEO with sufficient resources, including staffing, to sustain an effective ethics program;

(c) Requiring agency officials to provide the DAEO with the information, support, and cooperation necessary for the accomplishment of the DAEO's responsibilities;

(d) When action is warranted, enforcing government ethics laws and regulations through appropriate referrals to the Inspector General or the Department of Justice, investigations, and disciplinary or corrective action;

(e) Requiring that violations of government ethics laws and regulations, or interference with the functioning of the agency ethics program, be appropriately considered in evaluating the performance of senior executives;

(f) Requiring the Chief Information Officer and other appropriate agency officials to support the DAEO in using technology, to the extent practicable, to carry out ethics program functions such as delivering interactive training and tracking ethics program activities;

(g) Requiring appropriate agency officials to submit to the Office of Government Ethics, by May 31 each year, required reports of travel accepted by the agency under 31 U.S.C. 1353 during the period from October 1 through March 31;

(h) Requiring appropriate agency officials to submit to the Office of Government Ethics, by November 30 each year, required reports of travel accepted by the agency under 31 U.S.C. 1353 during the period from April 1 through September 30; and

(i) Prior to any Presidential election, supporting the agency's ethics program in preparing for a Presidential transition.

§ 2638.108 Government ethics responsibilities of the Office of Government Ethics.

The Office of Government Ethics is the supervising ethics office for the executive branch, providing overall leadership and oversight of the executive

branch ethics program designed to prevent and resolve conflicts of interest. The Office of Government Ethics has the authorities and functions established in the Act.

(a) *Authorities and functions.* Among other authorities and functions, the Office of Government Ethics has the authorities and functions described in this section.

(1) The Office of Government Ethics issues regulations regarding conflicts of interest, standards of conduct, financial disclosure, requirements for agency ethics programs, and executive branch-wide systems of records for government ethics records. In issuing any such regulations, the Office of Government Ethics will, to the full extent required under the Act and any Executive order, coordinate with the Department of Justice and the Office of Personnel Management. When practicable, the Office of Government Ethics will also consult with a diverse group of selected agency ethics officials that represents a cross section of executive branch agencies to ascertain representative views of the DAEO community when developing substantive revisions to this chapter.

(2) The Office of Government Ethics reviews and approves or disapproves agency supplemental ethics regulations.

(3) The Office of Government Ethics issues formal advisory opinions to interested parties, pursuant to § 2638.209. When developing a formal advisory opinion, the Office of Government Ethics will provide interested parties with an opportunity to comment.

(4) The Office of Government Ethics issues guidance and informal advisory opinions, pursuant to § 2638.208. When practicable, the Office of Government Ethics will consult with selected agency ethics officials to ascertain representative views of the DAEO community when developing guidance or informal advisory opinions that the Director determines to be of significant interest to a broad segment of the DAEO community.

(5) The Office of Government Ethics supports agency ethics officials through such training, advice, and counseling as the Director deems necessary.

(6) The Office of Government Ethics provides assistance in interpreting government ethics laws and regulations to executive branch Offices of Inspector General and other executive branch entities.

(7) When practicable, the Office of Government Ethics convenes quarterly executive branch-wide meetings of key agency ethics officials. When the Office of Government Ethics convenes a major executive branch-wide training event, the event normally serves in place of a quarterly meeting.

(8) Pursuant to sections 402(b)(10) and 403 of the Act, the Director requires agencies to furnish the Office of Government Ethics with all information, reports, and records which the Director determines to be necessary for the performance of the Director's duties, except when such a release is prohibited by law.

(9) The Office of Government Ethics conducts reviews of agency ethics programs in order to ensure their compliance with program requirements and to ensure their effectiveness in advancing the mission of the executive branch-wide ethics program. The Office of Government Ethics also conducts single-issue reviews of individual agencies, groups of agencies, or the executive branch ethics program as a whole.

(10) The Office of Government Ethics reviews financial disclosure reports filed by employees, former employees, nominees, candidates for the Office of the President of the United States, and candidates for the Office of the Vice President of the United States who are required to file executive branch financial disclosure reports with the Office of Government Ethics pursuant to sections 101, 103(c), and 103(l) of the Act.

(11) By January 15 each year, the Office of Government Ethics issues year-end reports to agencies regarding their compliance with the obligations, pursuant to section 103(c) of the Act and part 2634 of this chapter:

(i) To timely transmit the annual public financial disclosure reports of certain high-level officials to the Office of Government Ethics; and

(ii) To promptly submit such additional information as is necessary to obtain the Director's certification of the reports.

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(12) The Office of Government Ethics oversees the development of ethics agreements between agencies and Presidential nominees for positions in the executive branch requiring Senate confirmation and tracks compliance with such agreements. The Office of Government Ethics also maintains a guide that provides sample language for ethics agreements of Presidential nominees requiring Senate confirmation.

(13) The Office of Government Ethics proactively assists Presidential Transition Teams in support of effective and efficient Presidential transitions and, to the extent practicable, may provide Presidential campaigns with advice and counsel on preparing for Presidential transitions.

(14) The Office of Government Ethics orders such corrective action on the part of an agency as the Director deems necessary, pursuant to subpart D of this part, and such corrective action on the part of individual executive branch employees as the Director deems necessary, pursuant to subpart E of this part.

(15) The Office of Government Ethics makes determinations regarding public financial disclosure requirements, pursuant to §§ 2634.202(c), 2634.203, 2634.205, and 2634.304(f) of this chapter.

(16) The Office of Government Ethics conducts outreach to inform the public of matters related to the executive branch ethics program.

(17) The Director and the Office of Government Ethics take such other actions as are necessary and appropriate to carry out their responsibilities under the Act.

(b) *Other authorities and functions.* Nothing in this subpart or this chapter limits the authority of the Director or the Office of Government Ethics under the Act.

Subpart B—Procedures of the Executive Branch Ethics Program

§ 2638.201 In general.

This subpart establishes certain procedures of the executive branch ethics program. The procedures set forth in this subpart are in addition to procedures established elsewhere in this chapter and in the program advisories

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and other issuances of the Office of Government Ethics.

§ 2638.202 Furnishing records and information generally.

Consistent with sections 402 and 403 of the Act, each agency must furnish to the Director all information and records in its possession which the Director deems necessary to the performance of the Director's duties, except to the extent prohibited by law. All such information and records must be provided to the Office of Government Ethics in a complete and timely manner.

§ 2638.203 Collection of public financial disclosure reports required to be submitted to the Office of Government Ethics.

The public financial disclosure reports of individuals, other than candidates for elected office and elected officials, whose reports are required by section 103 of the Act to be transmitted to the Office of Government Ethics will be transmitted through the executive branch-wide electronic filing system of the Office of Government Ethics, except in cases in which the Director determines that using that system would be impracticable.

§ 2638.204 Collection of other public financial disclosure reports.

This section establishes the procedure that the executive branch ethics program will use to collect, pursuant to section 101 of the Act, public financial disclosure reports of individuals whose reports are not required by section 103 of the Act to be transmitted to the Office of Government Ethics.

(a) *General.* Subject to the exclusions and exceptions in paragraphs (b) through (d) of this section, the public financial disclosure reports required by part 2634 of this chapter will be collected through the executive branch-wide electronic filing system of the Office of Government Ethics.

(b) *Exclusions.* This section does not apply to persons whose financial disclosure reports are covered by section 105(a)(1) or (2) of the Act, persons whose reports are required by section 103 of the Act to be transmitted to the Office of Government Ethics, or such

other persons as the Director may exclude from the coverage of this section in the interest of the executive branch ethics program.

(c) *Authorization to collect public reports in paper format or through a legacy electronic filing system.* Upon written request signed by the DAEO or ADAEO and by the Chief Information Officer, the Director of the Office of Government Ethics may authorize an agency in the interest of the executive branch ethics program to collect public financial disclosure reports in paper format or through a legacy electronic filing system other than the executive branch-wide electronic filing system of the Office of Government Ethics. The Director may rescind any such authorization based on a written determination that the rescission promotes the efficiency or effectiveness of the executive branch ethics program, but only after providing the agency with advance written notice and an opportunity to respond. The rescission will become effective on January 1 of a subsequent calendar year, but not less than 24 months after notice is provided.

(d) *Exceptions in cases of extraordinary circumstances or temporary technical difficulties.* Based on a determination that extraordinary circumstances or temporary technical difficulties make the use of an electronic filing system impractical, the DAEO or ADAEO may authorize an individual to file a public financial disclosure report using such alternate means of filing as are authorized in the program advisories of the Office of Government Ethics. To the extent practicable, agencies should limit the number of exceptions they grant under this paragraph each year. The Director may suspend an agency's authority to grant exceptions under this paragraph when the Director is concerned that the agency may be granting exceptions unnecessarily or in a manner that is inconsistent with § 2638.601(c). Nothing in this paragraph limits the authority of the agency to excuse an employee from filing electronically to the extent necessary to provide reasonable accommodations under the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, or other applicable legal authority.

§ 2638.205 Collection of confidential financial disclosure reports.

This section establishes the procedure that the executive branch will use to collect confidential financial disclosure reports from employees of the executive branch. To the extent not inconsistent with part 2634 of this chapter or with the approved forms, instructions, and other guidance of the Office of Government Ethics, the DAEO of each agency will determine the means by which the agency will collect confidential financial disclosure reports, including a determination as to whether the agency will collect such reports in either paper or electronic format. Nothing in this paragraph limits the authority of the agency to provide reasonable accommodations under the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, or other applicable legal authority.

§ 2638.206 Notice to the Director of certain referrals to the Department of Justice.

This section establishes the requirement to provide the Director with notice of certain referrals.

(a) Upon any referral made pursuant to 28 U.S.C. 535 to the Department of Justice regarding a potential violation of a conflict of interest law, the referring office must notify the Director of the referral by filing a completed OGE Form 202 with the Director, unless prohibited by law.

(b) In order to ensure effective coordination of this section, the Office of Government Ethics will obtain the concurrence of the Chairperson of the Council of the Inspectors General on Integrity and Efficiency before implementing substantive changes to the OGE Form 202.

(c) If an agency's procedures authorize an official outside the Office of Inspector General to make a referral covered by this section, that official must provide the Inspector General and the DAEO with copies of documents provided to the Director pursuant this section, unless prohibited by law.

§ 2638.207 Annual report on the agency's ethics program.

(a) By February 1 of each year, an agency must file with the Office of

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Government Ethics, pursuant to section 402(e)(1) of the Act, a report containing such information about the agency's ethics program as is requested by the Office of Government Ethics. The report must be filed electronically and in a manner consistent with the instructions of the Office of Government Ethics.

(b) In order to facilitate the collection of required information by agencies, the Office of Government Ethics will provide agencies with advance notice regarding the contents of the report prior to the beginning of the reporting period for information that would be expected to be tracked over the course of the reporting period. Otherwise, it will provide as much notice as practicable, taking into consideration the effort required to collect the information.

§ 2638.208 Written guidance on the executive branch ethics program.

This section describes several means by which the Office of Government Ethics provides agencies, employees, and the public with written guidance regarding its legal interpretations, program requirements, and educational offerings. Normally, written guidance is published on the official website of the Office of Government Ethics, www.oge.gov.

(a) *Legal advisories.* The Office of Government Ethics issues legal advisories, which are memoranda regarding the interpretation of government ethics laws and regulations. They are intended primarily to provide education and notice to executive branch ethics officials; prospective, current, and former executive branch employees; and individuals who interact with the executive branch.

(b) *Program advisories.* The Office of Government Ethics issues program advisories, which are memoranda regarding the requirements or procedures applicable to the executive branch ethics program and individual agency ethics programs. They are intended primarily to instruct agencies on uniform procedures for the executive branch ethics program.

(c) *Informal advisory opinions.* Upon request or upon its own initiative, the Office of Government Ethics issues in-

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formal advisory opinions. Informal advisory opinions address subjects that in the opinion of the Director do not meet the criteria for issuance of formal advisory opinions. They are intended primarily to provide guidance to individuals and illustrate the application of government ethics laws and regulations to specific circumstances.

[86 FR 63308, Nov. 16, 2021]

§ 2638.209 Formal advisory opinions.

This section establishes the formal advisory opinion service of the Office of Government Ethics.

(a) *General.* The Office of Government Ethics renders formal advisory opinions pursuant to section 402(b)(8) of the Act. A formal advisory opinion will be issued when the Director determines that the criteria and requirements established in this section are met.

(b) *Subjects of formal advisory opinions.* Formal advisory opinions may be rendered on matters of general applicability or important matters of first impression concerning the application of the Act; Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990; 18 U.S.C. 202–209; and regulations interpreting or implementing these authorities. In determining whether to issue a formal advisory opinion, the Director will consider:

(1) The unique nature of the question and its precedential value;

(2) The potential number of employees throughout the government affected by the question;

(3) The frequency with which the question arises;

(4) The likelihood or presence of inconsistent interpretations on the same question by different agencies; and

(5) The interests of the executive branch ethics program.

(c) *Role of the formal advisory opinion service.* The formal advisory opinion service of the Office of Government Ethics is not intended to replace the government ethics advice and counseling programs maintained by executive branch agencies. Normally, formal advisory opinions will not be issued with regard to the types of questions appropriately directed to an agency's DAEO. If a DAEO receives a request

that the DAEO believes might appropriately be answered by the Office of Government Ethics through a formal advisory opinion, the DAEO will consult informally with the General Counsel of the Office of Government Ethics for instructions as to whether the matter should be referred to the Office of Government Ethics or retained by the agency for handling. Except in unusual circumstances, the Office of Government Ethics will not render formal advisory opinions with respect to hypothetical situations posed in requests for formal advisory opinions. At the discretion of the Director, however, the Office of Government Ethics may render formal advisory opinions on certain proposed activities or financial transactions.

(d) *Eligible persons.* Any person may request an opinion with respect to a situation in which that person is directly involved, and an authorized representative may request an opinion on behalf of that person. However, an employee will normally be required to seek an opinion from the agency's DAEO before requesting a formal advisory opinion from the Office of Government Ethics. In addition, a DAEO may request a formal advisory opinion on behalf of the agency or a prospective, current, or former employee of that agency.

(e) *Submitting a request for a formal advisory opinion.* The request must be submitted either by electronic mail addressed to *ContactOGE@oge.gov* or by mail, through either the United States Postal Service or a private shipment service, to the Director of the Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917. Personal deliveries will not be accepted.

(f) *Requirements for request.* The request must include:

(1) An express statement indicating that the submission is a request for a formal advisory opinion;

(2) The name, street address, and telephone number of the person requesting the opinion;

(3) The name, street address, and telephone number of any representative of that person;

(4) All material facts necessary for the Director to render a complete and correct opinion;

(5) The date of the request and the signature of either the requester or the requester's representative; and

(6) In the case of a request signed by a representative, a written designation of the representative that is dated and signed by the requester.

(g) *Optional materials.* At the election of the requester, the request may also include legal memoranda or other material relevant to the requested formal advisory opinion.

(h) *Additional information.* The Director may request such additional information or documentation as the Director deems necessary to the development of a formal advisory opinion, from either the requester or other sources. If the requester or the requester's representative fails to cooperate with such a request, the Office of Government Ethics normally will close the matter without issuing a formal advisory opinion.

(i) *Comments from interested parties.* The Office of Government Ethics will, to the extent practicable, solicit written comments on a request by posting a prominent notice on its official Web site. Any such notice will summarize relevant information in the request, provide interested parties 30 days to submit written comments, and include instructions for submitting written comments. Written comments submitted after the deadline will be considered only at the discretion of the Director.

(j) *Consultation with the Department of Justice.* Whenever the Office of the Government Ethics is considering rendering a formal advisory opinion, the Director will consult with the Office of Legal Counsel of the Department of Justice sufficiently in advance to afford that office an opportunity to review the matter. In addition, whenever a request involves an actual or apparent violation of any provision of 18 U.S.C. 202-209, the Director will consult with the Criminal Division of the Department of Justice. If the Criminal Division determines that an investigation or prosecution will be undertaken,

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the Director will take no further action on the request, unless the Criminal Division makes a determination not to prosecute.

(k) *Consultation with other executive branch officials.* The Director will consult with such other executive branch officials as the Director deems necessary to ensure thorough consideration of issues and information relevant to the request by the Office of Government Ethics. In the case of a request submitted by a prospective or current employee, the Director will share a copy of the request with the DAEO of the employee's agency.

(l) *Publication.* The Office of Government Ethics will publish each formal advisory opinion on its official Web site. Prior to publishing a formal advisory opinion on its Web site, the Office of Government Ethics will delete information that identifies individuals involved and that is unnecessary to a complete understanding of the opinion.

(m) *Reliance on formal advisory opinions.* (1) Any formal advisory opinion referred to in this section or any provisions or finding of a formal advisory opinion involving the application of the Act or the regulations promulgated pursuant to the Act or Executive order may be relied upon by:

(i) Any person directly involved in the specific transaction or activity with respect to which such advisory opinion has been rendered; and

(ii) Any person directly involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such formal advisory opinion was rendered.

(2) Any person who relies upon any provision or finding of any formal advisory opinion in accordance with this paragraph and who acts in good faith in accordance with the provisions and findings of such opinion will not, as a result of such act, be subject to prosecution under 18 U.S.C. 202-209 or, when the opinion is exculpatory, be subject to any disciplinary action or civil action based upon legal authority cited in that opinion.

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§ 2638.210 Presidential transition planning.

Prior to any Presidential election, each agency has a responsibility to prepare its agency ethics program for a Presidential transition. Such preparations do not constitute support for a particular candidate and are not reflective of a belief regarding the likely outcome of the election; rather, they reflect an understanding that agencies are responsible for ensuring the continuity of governmental operations.

(a) *Preparing the ethics program for a transition.* The agency head or the DAEO must, not later than 12 months before any Presidential election, evaluate whether the agency's ethics program has an adequate number of trained agency ethics officials to effectively support a Presidential transition.

(b) *Support by the Office of Government Ethics.* In connection with any Presidential election, the Office of Government Ethics will:

(1) Prior to the election, offer training opportunities for agency ethics officials on counseling departing non-career appointees on post-employment restrictions, reviewing financial disclosure reports, drafting ethics agreements for Presidential nominees, and counseling new noncareer appointees on conflict of interest laws and the Standards of Conduct; and

(2) After the election, in the event of a Presidential transition, proactively assist the Presidential Transition Team in preparing for Presidential nominations, coordinate with agency ethics officials, and develop plans to implement new initiatives related to government ethics.

Subpart C—Government Ethics Education

§ 2638.301 In general.

Every agency must carry out a government ethics education program to teach employees how to identify government ethics issues and obtain assistance in complying with government ethics laws and regulations. An agency's failure to comply with any of the education or notice requirements set forth in this subpart does not exempt

an employee from applicable government ethics requirements.

§ 2638.302 Definitions.

The following definitions apply to the format of the various types of training required in this subpart. The agency may deviate from these prescribed formats to the extent necessary to provide reasonable accommodations to participants under the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, or other applicable legal authority.

(a) *Live*. A training presentation is considered live if the presenter personally communicates a substantial portion of the material at the same time as the employees being trained are receiving the material, even if part of the training is prerecorded or automated. The training may be delivered in person or through video or audio technology. The presenter must respond to questions posed during the training and provide instructions for participants to submit questions after the training.

Example 1. An agency ethics official provides a presentation regarding government ethics and takes questions from participants who are assembled in a training room with the ethics official. At the end of the session, the ethics official provides contact information for participants who wish to pose additional questions. This training is considered live.

Example 2. An agency ethics official provides a presentation to a group of employees in an auditorium. She presents an introduction and a brief overview of the material that will be covered in the training. She has participants watch a prerecorded video regarding government ethics. She stops the video frequently to elaborate on key concepts and offer participants opportunities to pose questions before resuming the video. At the end of the session, she recaps key concepts and answers additional questions. She then provides contact information for employees who wish to pose additional questions. This training is considered live.

Example 3. The ethics official in Example 2 arranges for several Senate-confirmed public filers stationed outside of headquarters to participate in the live training via streaming video or telephone. For these remote participants, the ethics official also establishes a means for them to pose questions during the training, such as by emailing questions to her assistant. She also provides these remote participants with instructions for contacting

the ethics office to pose additional questions after the training. This training is also considered live for the remote participants.

Example 4. Agency ethics officials present training via a telephone conference. A few dozen agency employees dial into the conference call. The ethics officials take questions that are submitted by email and provide contact information for employees who wish to pose additional questions later. This training is considered live.

Example 5. Several Senate-confirmed public filers required to complete live training in a particular year are stationed at various facilities throughout the country. For these filers, an ethics official schedules a 20-minute conference call, emails them copies of the written materials and a link to a 40-minute video on government ethics, and instructs them to view the video before the conference call. During the conference call, the ethics official recaps key concepts, takes questions, and provides his contact information in case participants have additional questions. The public filers then confirm by email that they watched the video and participated in the conference call. This training is considered live because a substantial portion of the training was live.

(b) *Interactive*. A training presentation is considered interactive if the employee being trained is required to take an action with regard to the subject of the training. The required action must involve the employee's use of knowledge gained through the training and may not be limited to merely advancing from one section of the training to another section. Training that satisfies the requirements of paragraph (a) of this section will also satisfy the requirements of this paragraph.

Example 1. An automated system allows employees to view a prerecorded video in which an agency ethics official provides training. At various points, the system poses questions and an employee selects from among a variety of possible answers. The system provides immediate feedback as to whether the selections are correct or incorrect. When the employee's selections are incorrect, the system displays the correct answer and explains the relevant concepts. This training is considered interactive.

Example 2. If, instead of a video, the training described in Example 1 were to include animated or written materials interspersed with questions and answers, the training would still be considered interactive.

Example 3. A DAEO emails materials to employees who are permitted under part 2638 to complete interactive training. The materials include a written training presentation,

questions, and space for employees to provide written responses. Employees are instructed to submit their answers to agency ethics officials, who provide individualized feedback. This training is considered interactive.

Example 4. A DAEO emails materials to employees who are permitted under part 2638 to complete interactive training. The materials include a written training presentation, questions, and an answer key. The DAEO also distributes instructions for contacting an ethics official with any questions about the subjects covered. This training meets the minimum requirements to be considered interactive, even though the employees are not required to submit their answers for review and feedback. However, any DAEO who uses this minimally interactive format is encouraged to provide employees with other opportunities for more direct and personalized feedback.

§ 2638.303 Notice to prospective employees.

Written offers of employment for positions covered by the Standards of Conduct must include the information required in this section to provide prospective employees with notice of the ethical obligations associated with the positions.

(a) Content. The written offer must include, in either the body of the offer or an attachment:

(1) A statement regarding the agency's commitment to government ethics;

(2) Notice that the individual will be subject to the Standards of Conduct and the criminal conflict of interest statutes as an employee;

(3) Contact information for an appropriate agency ethics office or an explanation of how to obtain additional information on applicable ethics requirements;

(4) Where applicable, notice of the time frame for completing initial ethics training; and

(5) Where applicable, a statement regarding financial disclosure requirements and an explanation that new entrant reports must be filed within 30 days of appointment.

(b) *DAEO's authority.* At the election of the DAEO, the DAEO may specify the language that the agency will use in the notice required under paragraph (a) of this section or may approve, disapprove, or revise language drafted by other agency officials.

(c) *Tracking.* Each agency must establish written procedures, which the DAEO must review each year, for issuing the notice required in this section. In the case of an agency with 1,000 or more employees, the DAEO must review any submissions under § 2638.310 each year to confirm that the agency has implemented an appropriate process for meeting the requirements of this section.

§ 2638.304 Initial ethics training.

Each new employee of the agency subject to the Standards of Conduct must complete initial ethics training that meets the requirements of this section.

(a) Coverage. (1) This section applies to each employee appointed to a position in an agency who was not an employee of the agency immediately prior to that appointment. This section also permits Presidential nominees for Senate-confirmed positions to complete the initial ethics training prior to appointment.

(2) The DAEO may exclude a non-supervisory position at or below the GS-8 grade level, or the equivalent, from the requirement to complete the training presentation described in paragraph (e)(1) of this section, provided that:

(i) The DAEO signs a written determination that the duties of the position do not create a substantial likelihood that conflicts of interest will arise;

(ii) The position does not meet the criteria set forth at § 2634.904 of this chapter; and

(iii) The agency provides an employee described in paragraph (a)(1) of this section who is appointed to the position with the written materials required under paragraph (e)(2) of this section within 3 months of appointment.

(b) *Deadline.* Except as provided in this paragraph, each new employee must complete initial ethics training within 3 months of appointment.

(1) In the case of a Presidential nominee for a Senate-confirmed position, the nominee may complete the ethics training before or after appointment, but not later than 3 months after appointment.

(2) In the case of a special Government employee who is reasonably expected to serve for no more than 60 days in a calendar year on a board, commission, or committee, the agency may provide the initial ethics training at any time before, or at the beginning of, the employee's first meeting of the board, commission, or committee.

(c) *Duration.* The duration of the training must be sufficient for the agency to communicate the basic ethical obligations of federal service and to present the content described in paragraph (e) of this section.

(d) *Format.* Employees covered by this section are required to complete interactive initial ethics training.

(e) *Content.* The following content requirements apply to initial ethics training.

(1) *Training presentation.* The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate for the employees participating in the training. The presentation must address concepts related to the following subjects:

- (i) Financial conflicts of interest;
- (ii) Impartiality;
- (iii) Misuse of position; and
- (iv) Gifts.

(2) *Written materials.* In addition to the training presentation, the agency must provide the employee with either the following written materials or written instructions for accessing them:

(i) The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency;

(ii) Provisions of any supplemental agency regulations that the DAEO determines to be relevant or a summary of those provisions;

(iii) Such other written materials as the DAEO determines should be included; and

(iv) Instructions for contacting the agency's ethics office.

(f) *Tracking.* Each agency must establish written procedures, which the DAEO must review each year, for initial ethics training. In the case of an agency with 1,000 or more employees, the DAEO must review any submissions under § 2638.310 each year to con-

firm that the agency has implemented an appropriate process for meeting the requirements of this section.

Example 1. The DAEO of a large agency decides that the agency's ethics officials will conduct live initial ethics training for high-level employees and certain procurement officials. The DAEO directs ethics officials to cover concepts related to financial conflicts of interest, impartiality, misuse of position, and gifts during the live training sessions. She also coordinates with the agency's Chief Information Officer to develop computerized training for all other new employees, and she directs her staff to include concepts related to financial conflicts of interest, impartiality, misuse of position, and gifts in the computerized training. The computerized training poses multiple-choice questions and provides feedback when employees answer the questions. At the DAEO's request, the agency's human resources officials distribute the required written materials as part of the onboarding procedures for new employees. The computerized training automatically tracks completion of the training, and the ethics officials use sign-in sheets to track participation in the live training. After the end of the calendar year, the DAEO reviews the materials submitted by the Office of Human Resources under § 2638.310 to confirm that the agency has implemented procedures for identifying new employees, distributing the written materials, and providing their initial ethics training. The agency's program for initial ethics training complies with the requirements of § 2638.304.

Example 2. The agency head, the DAEO, and the lead human resources official of an agency with more than 1,000 employees have agreed that human resources officials will conduct initial ethics training. The DAEO provides the lead human resources official with written materials for use during the training, approves the content of the presentations, and trains the human resources officials who will conduct the initial ethics training. After the end of the calendar year, the lead human resources official provides the DAEO with a copy of the agency's procedures for identifying new employees and providing initial ethics training, and the lead human resources official confirms that there is a reasonable basis for concluding that the procedures have been implemented. The DAEO reviews these procedures and finds them satisfactory. The agency has complied with its tracking obligations with regard to initial ethics training.

§ 2638.305 Additional ethics briefing for certain agency leaders.

In addition to other applicable requirements, each individual covered by this section must complete an ethics

briefing to discuss the individual's immediate ethics obligations. Although the ethics briefing is separate from the initial ethics training, the agency may elect to combine the ethics briefing and the initial ethics training, provided that the requirements of both this section and § 2638.304 are met.

(a) *Coverage.* This section applies to Senate-confirmed Presidential nominees and appointees, except for those in positions identified in § 2634.201(c)(2) of this chapter.

(b) *Deadline.* The following deadlines apply to the ethics briefing.

(1) Except as provided in paragraph (b)(2) of this section, each individual covered by this section must complete the ethics briefing after confirmation but not later than 15 days after appointment. The DAEO may grant an extension of the deadline not to exceed 30 days after appointment.

(2)(i) In extraordinary circumstances, the DAEO may grant an additional extension to an individual by issuing a written determination that an extension is necessary. The determination must describe the extraordinary circumstances necessitating the extension, caution the individual to be vigilant for conflicts of interest created by any newly acquired financial interests, remind the individual to comply with any applicable ethics agreement, and be accompanied by a copy of the ethics agreement(s). The DAEO must send a copy of the determination to the individual before expiration of the time period established in paragraph (b)(1) of this section. The agency must conduct the briefing at the earliest practicable date thereafter. The written determination must be retained with the record of the individual's briefing.

(ii) In the case of a special Government employee who is expected to serve for no more than 60 days in a calendar year on a board, commission, or committee, the agency must provide the ethics briefing before the first meeting of the board, commission, or committee.

(c) *Qualifications of presenter.* The employee conducting the briefing must have knowledge of government ethics laws and regulations and must be qualified, as the DAEO deems appropriate, to answer the types of basic and

advanced questions that are likely to arise regarding the required content.

(d) *Duration.* The duration of the ethics briefing must be sufficient for the agency to communicate the required content.

(e) *Format.* The ethics briefing must be conducted live.

(f) *Content.* The ethics briefing must include the following activities.

(1) If the individual acquired new financial interests reportable under section 102 of the Act after filing the nominee financial disclosure report, the agency ethics official must appropriately address the potential for conflicts of interest arising from those financial interests.

(2) The agency ethics official must counsel the individual on the basic recusal obligation under 18 U.S.C. 208(a).

(3) The agency ethics official must explain the recusal obligations and other commitments addressed in the individual's ethics agreement and ensure that the individual understands what is specifically required in order to comply with each of them, including any deadline for compliance. The ethics official and the individual must establish a process by which the recusals will be achieved, which may consist of a screening arrangement or, when the DAEO deems appropriate, vigilance on the part of the individual with regard to recusal obligations as they arise in particular matters.

(4) The agency ethics official must provide the individual with instructions and the deadline for completing initial ethics training, unless the individual completes the initial ethics training either before or during the ethics briefing.

(g) *Tracking.* The DAEO must maintain a record of the date of the ethics briefing for each current employee covered by this section.

Example 1. A group of ethics officials conducts initial ethics training for six Senate-confirmed Presidential appointees within 15 days of their appointments. At the end of the training, ethics officials meet individually with each of the appointees to conduct their ethics briefings. The agency and the appointees have complied with both § 2638.304 and § 2638.305.

Example 2. The Senate confirms a nominee for a position as an Assistant Secretary.

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After the nominee's confirmation but several days before her appointment, the nominee completes her initial ethics briefing during a telephone call with an agency ethics official, and the ethics official records the date of the briefing. The agency and the nominee have complied with §2638.305. During the telephone call, the ethics official also discusses the content required for initial ethics training and provides the nominee with instructions for accessing the required written materials online. The agency and the nominee have also complied with §2638.304.

§ 2638.306 Notice to new supervisors.

The agency must provide each employee upon initial appointment to a supervisory position with the written information required under this section.

(a) *Coverage.* This requirement applies to each civilian employee who is required to receive training pursuant to 5 CFR 412.202(b).

(b) *Deadline.* The agency must provide the written materials required by this section within 1 year of the employee's initial appointment to the supervisory position.

(c) *Written materials.* The written materials must include contact information for the agency's ethics office and the text of §2638.103. In addition, a copy of, a hyperlink to, or the address of a Web site containing the Principles of Ethical Conduct must be included, as well as such other information as the DAEO deems necessary for new supervisors.

(d) *Tracking.* Each agency must establish written procedures, which the DAEO must review each year, for supervisory ethics notices. In the case of an agency with 1,000 or more employees, the DAEO must review any submissions under §2638.310 each year to confirm that the agency has implemented an appropriate process for meeting the requirements of this section.

§ 2638.307 Annual ethics training for confidential filers and certain other employees.

Each calendar year, employees covered by this section must complete ethics training that meets the following requirements.

(a) *Coverage.* In any calendar year, this section applies to the following

employees, unless they are public filers:

(1) Each employee who is required to file an annual confidential financial disclosure report pursuant to §2634.904 of this chapter during that calendar year, except an employee who ceases to be a confidential filer before the end of the calendar year;

(2) Employees appointed by the President and employees of the Executive Office of the President;

(3) Contracting officers described in 41 U.S.C. 2101; and

(4) Other employees designated by the head of the agency.

(b) *Deadline.* The employee must complete required annual ethics training before the end of the calendar year.

(c) *Duration.* Agencies must provide employees with 1 hour of duty time to complete interactive training and review any written materials.

(d) *Format.* The following formatting requirements apply.

(1) Except as provided in paragraph (d)(2) of this section, employees covered by this section are required to complete interactive training.

(2) If the DAEO determines that it is impracticable to provide interactive training to a special Government employee covered by this section who is expected to work no more than 60 days in a calendar year, or to an employee who is an officer in the uniformed services serving on active duty for no more 30 consecutive days, only the requirement to provide the written materials required by this section will apply to that employee each year. The DAEO may make the determination as to individual employees or a group of employees.

(e) *Content.* The following content requirements apply to annual ethics training for employees covered by this section.

(1) *Training presentation.* The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate for the employees participating in the training. The presentation must address concepts related to the following subjects:

- (i) Financial conflicts of interest;
- (ii) Impartiality;
- (iii) Misuse of position; and

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(iv) Gifts.

(2) *Written materials.* In addition to the training presentation, the agency must provide the employee with either the following written materials or written instructions for accessing them:

(i) The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency;

(ii) Provisions of any supplemental agency regulations that the DAEO determines to be relevant or a summary of those provisions;

(iii) Such other written materials as the DAEO determines should be included; and

(iv) Instructions for contacting the agency's ethics office.

(f) *Tracking.* The following tracking requirements apply to training conducted pursuant to this section. An employee covered by this section must confirm in writing the completion of annual ethics training and must comply with any procedures established by the DAEO for such confirmation. If the DAEO or other presenter has knowledge that an employee completed required training, that individual may record the employee's completion of the training, in lieu of requiring the employee to provide written confirmation. In the case of an automated system that delivers interactive training, the DAEO may deem the employee to have confirmed the completion of the training if the system tracks completion automatically.

§ 2638.308 Annual ethics training for public filers.

Each calendar year, public filers and other employees specified in this section must complete ethics training that meets the following requirements.

(a) *Coverage.* In any calendar year, this section applies to each employee who is required to file an annual public financial disclosure report pursuant to § 2634.201(a) of this chapter during that calendar year, except for an employee who ceases to be a public filer during that calendar year.

(b) *Deadline.* A public filer must complete required annual ethics training before the end of the calendar year.

(c) *Qualifications of presenter.* The employee conducting any live training presentation must have knowledge of government ethics laws and regulations and must be qualified, as the DAEO deems appropriate, to answer the types of basic and advanced questions that are likely to arise regarding the required content.

(d) *Duration.* The duration of training must be sufficient for the agency to communicate the required content, but at least 1 hour. Agencies must provide employees with 1 hour of duty time to complete interactive training and review any written materials.

(e) *Format.* The annual ethics training must meet the following formatting requirements.

(1) Employees whose pay is set at Level I or Level II of the Executive Schedule must complete 1 hour of live training each year, unless a matter of vital national interest makes it necessary for an employee to complete interactive training in lieu of live training in a particular year.

(2) Other civilian employees identified in section 103(c) of the Act who are stationed in the United States must complete live training once every 2 years and interactive training in alternate years. In extraordinary circumstances, the DAEO may grant written authorization for an employee who is required to complete live training in a particular year to complete interactive training.

(3) All other employees covered by this section must complete interactive training.

(f) *Content.* The following content requirements apply to annual ethics training for employees covered by this section.

(1) *Training presentation.* The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate for the employees participating in the training. The presentation must address concepts related to the following subjects:

- (i) Financial conflicts of interest;
- (ii) Impartiality;
- (iii) Misuse of position; and
- (iv) Gifts.

(2) *Written materials.* In addition to the training presentation, the agency

must provide the employee with either the following written materials or written instructions for accessing them:

(i) The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency;

(ii) Provisions of any supplemental agency regulations that the DAEO determines to be relevant or a summary of those provisions;

(iii) Such other written materials as the DAEO determines should be included; and

(iv) Instructions for contacting the agency's ethics office.

(g) *Tracking.* The following tracking requirements apply to training conducted pursuant to this section. An employee covered by this section must confirm in writing the completion of annual ethics training and must comply with any procedures established by the DAEO for such confirmation. If the DAEO or other presenter has knowledge that an employee completed required training, that individual may record the employee's completion of the training, in lieu of requiring the employee to provide written confirmation. In the case of an automated system that delivers interactive training, the DAEO may deem the employee to have confirmed the completion of the training if the system tracks completion automatically.

Example 1. The DAEO of a small agency distributes the written materials for annual training by emailing a link to a Web site that contains the required materials. He then conducts a live training session for all of the agency's public filers. He spends the first 15 minutes of the training addressing concepts related to financial conflicts of interest, impartiality, misuse of position, and gifts. Because several participants are published authors, he spends the next 15 minutes covering restrictions on compensation for speaking, teaching, and writing. He then spends 20 minutes discussing hypothetical examples related to the work of the agency and 10 minutes answering questions. The training meets the content requirements of this section. Further, because live training satisfies the requirements for interactive training, this training meets the formatting requirements for all public filers, including those required to complete interactive training.

Example 2. An ethics official personally appears at each monthly senior staff meeting to conduct a 10-minute training session on government ethics. Across the year, he addresses concepts related to financial conflicts of interest, impartiality, misuse of position, gifts, and other subjects related to government ethics laws and regulations, although no one session covers all of these subjects. During each meeting, he distributes a one-page handout summarizing the key points of his presentation, takes questions, and provides contact information for employees who wish to pose additional questions. He records the names of the public filers in attendance at each meeting. Once a year, he emails them the required written materials, as well as the one-page summaries. While many of these public filers do not attend all 12 meetings, each attends at least six sessions during the calendar year. Although some of the filers missed the sessions that addressed gifts, they all received the handout summarizing the presentation on gifts. The training satisfies the annual training requirement for the public filers who attended the meetings, including those required to complete interactive training. Moreover, because the ethics official recorded the names of the public filers who attended, the filers are not required to separately confirm their completion of the training.

Example 3. One of the Presidentially appointed, Senate-confirmed employees in Example 2 was required to complete live training that year. Because she attended only four senior staff meetings during the year, she completed only 40 minutes of annual ethics training. The DAEO allows the employee to spend 20 minutes reviewing the handouts and written materials and send an email confirming that she completed her review before the end of the calendar year. This arrangement satisfies the requirements for live annual training because a substantial portion of the training was live.

§ 2638.309 Agency-specific ethics education requirements.

The DAEO may establish additional requirements for the agency's ethics education program, with or without a supplemental agency regulation under § 2635.105 of this chapter.

(a) *Groups of employees.* The DAEO may establish specific government ethics training requirements for groups of agency employees.

(b) *Employees performing ethics duties.* The DAEO has an obligation to ensure that employees performing assigned ethics duties have the necessary expertise with regard to government ethics

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laws and regulations. If the DAEO determines that employees engaged in any activities described in §§ 2638.104 and 2638.105 require training, the DAEO may establish specific training requirements for them either as a group or individually.

(c) *Procedures.* The DAEO may establish specific procedures for training that the DAEO requires under paragraph (a) or (b) of this section, including any certification procedures the DAEO deems necessary. Agency employees must comply with the requirements and procedures that the DAEO establishes under this section.

§ 2638.310 Coordinating the agency's ethics education program.

In an agency with 1,000 or more employees, any office that is not under the supervision of the DAEO but has been delegated responsibility for issuing notices, pursuant to § 2638.303 or § 2638.306, or conducting training, pursuant to § 2638.304, must submit the following materials to the DAEO by January 15 each year:

(a) A written summary of procedures that office has established to ensure compliance with this subpart; and

(b) Written confirmation that there is a reasonable basis for concluding that the procedures have been implemented.

Subpart D—Correction of Executive Branch Agency Ethics Programs

§ 2638.401 In general.

The Office of Government Ethics has authority, pursuant to sections 402(b)(9) and 402(f)(1) of the Act, to take the action described in this subpart with respect to deficiencies in agency ethics programs. Agency ethics programs comprise the matters described in this subchapter for which agencies are responsible.

§ 2638.402 Informal action.

If the Director has information indicating that an agency ethics program is not compliant with the requirements set forth in applicable government ethics laws and regulations, the Director is authorized to take any or all of the

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measures described in this section. The Director may:

(a) Contact agency ethics officials informally to identify the relevant issues and resolve them expeditiously;

(b) Issue a notice of deficiency to make the agency aware of its possible noncompliance with an applicable government ethics law or regulation;

(c) Require the agency to respond in writing to the notice of deficiency;

(d) Require the agency to provide such additional information or documentation as the Director determines to be necessary;

(e) Issue an initial decision with findings as to the existence of a deficiency in the agency's ethics program;

(f) Require the agency to correct or, at the Director's discretion, satisfactorily mitigate any deficiency in its ethics program;

(g) Provide the agency with guidance on measures that would correct or satisfactorily mitigate any program deficiency;

(h) Monitor the agency's efforts to correct or satisfactorily mitigate the deficiency and require the agency to submit progress reports; or

(i) Take other actions authorized under the Act to resolve the matter informally.

§ 2638.403 Formal action.

If the Director determines that informal action, pursuant to § 2638.402, has not produced an acceptable resolution, the Director may issue an order directing the agency to take specific corrective action.

(a) Before issuing such an order, the Director will:

(1) Advise the agency in writing of the deficiency in its ethics program;

(2) Describe the action that the Director is considering taking;

(3) Provide the agency with 30 days to respond in writing; and

(4) Consider any timely written response submitted by the agency.

(b) If the Director is satisfied with the agency's response, no order will be issued.

(c) If the Director decides to issue an order, the order will describe the corrective action to be taken.

(d) If the agency does not comply with the order within a reasonable time, the Director will:

(1) Notify the head of the agency of intent to furnish a report of non-compliance to the President and the Congress;

(2) Provide the agency 14 calendar days within which to furnish written comments for submission with the report of noncompliance; and

(3) Report the agency's noncompliance to the President and to the Congress.

Subpart E—Corrective Action Involving Individual Employees

§ 2638.501 In general.

This subpart addresses the Director's limited authority, pursuant to sections 402(b)(9) and 402(f)(2) of the Act, to take certain actions with regard to individual employees if the Director suspects a violation of a noncriminal government ethics law or regulation. Section 402(f)(5) of the Act prohibits the Director from making any finding regarding a violation of a criminal law. Therefore, the Director will refer possible criminal violations to an Inspector General or the Department of Justice, pursuant to § 2638.502. If, however, the Director is concerned about a possible violation of a noncriminal government ethics law or regulation by an employee, the Director may notify the employee's agency, pursuant to § 2638.503. In the rare circumstance that an agency does not address a matter after receiving this notice, the Director may use the procedures in § 2638.504 to issue a nonbinding recommendation of a disciplinary action or an order to terminate an ongoing violation. Nothing in this subpart relieves an agency of its primary responsibility to ensure compliance with government ethics laws and regulations.

§ 2638.502 Violations of criminal provisions related to government ethics.

Consistent with section 402(f) of the Act, nothing in this subpart authorizes the Director or any agency official to make a finding as to whether a provision of title 18, United States Code, or any other criminal law of the United States outside of such title, has been or

is being violated. If the Director has information regarding the violation of a criminal law by an individual employee, the Director will notify an Inspector General or the Department of Justice.

§ 2638.503 Recommendations and advice to employees and agencies.

The Director may make such recommendations and provide such advice to employees or agencies as the Director deems necessary to ensure compliance with applicable government ethics laws and regulations. The Director's authority under this section includes the authority to communicate with agency heads and other officials regarding government ethics and to recommend that the agency investigate a matter or consider taking disciplinary or corrective action against individual employees.

§ 2638.504 Violations of noncriminal provisions related to government ethics.

In the rare case that consultations made pursuant to § 2638.503 have not resolved the matter, the Director may use the procedures in this section if the Director has reason to believe that an employee is violating, or has violated, any noncriminal government ethics law or regulation. Any proceedings pursuant to this section will be conducted in accordance with applicable national security requirements.

(a) *Agency investigation.* The Director may recommend that the agency head or the Inspector General conduct an investigation. If the Director determines thereafter that an agency head has not conducted an investigation within a reasonable time, the Director will notify the President.

(b) *Initiating further proceedings.* Following an investigation pursuant to paragraph (a) of this section or a determination by the Director that an investigation has not been conducted within a reasonable time, the Director may either initiate further proceedings under this section or close the involvement of the Office of Government Ethics in the matter.

(1) If the Director initiates further proceedings, the Director will notify

the employee in writing of the suspected violation, the right to respond orally and in writing, and the right to be represented. The notice will include instructions for submitting a written response and requesting an opportunity to present an oral response, copies of this section and sections 401–403 of the Act, and copies of the material relied upon by the Office of Government Ethics.

(2) If the Director is considering issuing an order directing the employee to take specific action to terminate an ongoing violation, the Director will also provide notice of the potential issuance of an order and the right to request a hearing, pursuant to paragraph (f) of this section.

(c) *Employee's response.* The employee will be provided with a reasonable opportunity to present an oral response to the General Counsel of the Office of Government Ethics within 30 calendar days of the date of the employee's receipt of the notice described in paragraph (b) of this section. If the employee fails to timely request an opportunity to present an oral response or fails to cooperate with reasonable efforts to schedule the oral response, only a timely submitted written response will be considered.

(d) *General Counsel's recommendation.* After affording the employee 30 calendar days to respond, the General Counsel will provide the Director with a written recommendation as to the action warranted by the circumstances. However, if the employee has timely exercised an applicable right to request a hearing pursuant to paragraph (g) of this section, the provisions of paragraph (g) will apply instead of the provisions of this paragraph.

(1) If the employee has not had an opportunity to comment on any newly obtained material relied upon for the recommendation, the General Counsel will provide the employee with an opportunity to comment on that material before submitting the recommendation to the Director.

(2) The recommendation will include findings of fact and a conclusion as to whether it is more likely than not that a violation has occurred. The General Counsel will provide the Director with copies of the material relied upon for

the recommendation, including any timely written response and a transcript of any oral response of the employee.

(3) In the case of an ongoing violation, the General Counsel may recommend an order directing the employee to take specific action to terminate the violation, provided that the employee has been afforded the notice required under paragraph (f) of this section and an opportunity for a hearing.

(e) *Decisions and orders of the Director.* After reviewing the recommendation of the General Counsel pursuant to paragraph (d) of this section or, in the event of a hearing, the recommendation of the administrative law judge pursuant to paragraph (g)(7) of this section, the Director may issue a decision and, if applicable, an order. The authority of the Director to issue decisions and orders under this paragraph may not be delegated to any other official. The Director's decision will include written findings and conclusions with respect to all material issues and will be supported by substantial evidence of record.

(1) A copy of the decision and order will be furnished to the employee and, if applicable, the employee's representative. Copies will also be provided to the DAEO and the head of the agency or, where the employee is the head of an agency, to the President. The Director's decision and any order will be posted on the official Web site of the Office of Government Ethics, except to the extent prohibited by law.

(2) The Director's decision may include a nonbinding recommendation that appropriate disciplinary or corrective action be taken against the employee. If the agency head does not take the action recommended within a reasonable period of time, the Director may notify the President.

(3) In the case of an ongoing violation, the Director may issue an order directing the employee to take specific action to terminate the violation, provided that the employee has been afforded the notice required under paragraph (f) of this section and an opportunity for a hearing.

(f) *Notice of the right to request a hearing regarding an order to terminate a violation.* Before an order to terminate an ongoing violation may be recommended or issued under this section, the employee must be provided with written notice of the potential issuance of an order, the right to request a hearing, and instructions for requesting a hearing.

(1) If the employee submits a written request for a hearing within 30 calendar days of the date of the employee's receipt of the notice, the hearing will be conducted pursuant to paragraph (g) of this section;

(2) If the employee does not submit a written request for a hearing within 30 days of receipt of the notice, the General Counsel may issue a recommendation, pursuant to paragraph (d) of this section, in lieu of a hearing after first considering any timely response of the employee, pursuant to paragraph (c) of this section; and

(3) If the employee timely submits written requests for both a hearing, pursuant to paragraph (f) of this section, and an oral response, pursuant to paragraph (c) of this section, only a hearing will be conducted, pursuant to paragraph (g) of this section.

(g) *Hearings.* If, after receiving a notice required pursuant to paragraph (f) of this section, the employee submits a timely request for a hearing, an administrative law judge who has been appointed under 5 U.S.C. 3105 will serve as the hearing officer, and the following procedures will apply to the hearing. An employee of the Office of Government Ethics will be assigned to provide the administrative law judge with logistical support in connection with the hearing.

(1) The General Counsel of the Office of Government Ethics will designate attorneys to present evidence and argument at the hearing in support of a possible finding that the employee is engaging in an ongoing violation. The General Counsel will serve as Advisor to the Director and will not, in connection with the presentation of evidence and argument against the employee, direct or supervise these attorneys. Any attorney who presents evidence, argument, or testimony against the employee at the hearing will be

recused from assisting the Director or the General Counsel in connection with the contemplated order.

(2) The administrative law judge will issue written instructions for the conduct of the hearing, including deadlines for submitting lists of proposed witnesses and exchanging copies of documentary evidence. The hearing will be conducted informally, and the administrative law judge may make such rulings as are necessary to ensure that the hearing is conducted equitably and expeditiously.

(3) The parties to the hearing will be the employee and the attorneys of the Office of Government Ethics designated to present evidence and arguments supporting a finding that a violation is ongoing, respectively. The parties will not engage in *ex parte* communications with the administrative law judge, unless the administrative law judge authorizes limited *ex parte* communications regarding scheduling and logistical matters.

(4) If either party requests assistance in securing the appearance of an approved witness who is an employee, the administrative law judge may, at his or her discretion, notify the General Counsel, who will assist the Director in requesting that the head of the employing agency produce the witness, pursuant to section 403(a)(1) of the Act. The Director will notify the President if an agency head fails to produce the approved witness.

(5) The hearing will be conducted on the record and witnesses will be placed under oath and subject to cross-examination. Following the hearing, the administrative law judge will provide each party with a copy of the hearing transcript.

(6) Hearings will generally be open to the public, but the administrative law judge may issue a written order closing, in whole or in part, the hearing in the best interests of national security, the employee, a witness, or an affected person. The order will set forth the reasons for closing the hearing and, along with any objection to the order by a party, will be made a part of the record. Unless specifically excluded by the administrative law judge, the DAEO of the employee's agency will be permitted to attend a closed hearing. If

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the administrative law judge denies a request by a party or an affected person to close the hearing, in whole or in part, that denial will be immediately appealable by the requester. The requester must file a notice of appeal with the Director within 3 working days. In the event that such a notice is filed, the hearing will be held in abeyance pending resolution of the appeal. The notice of appeal, exclusive of attachments, may not exceed 10 pages of double-spaced type. The Director will afford the parties and, if not a party, the requester the opportunity to make an oral presentation in person or via telecommunications technology within 3 working days of the filing of the appeal. The oral presentation will be conducted on the record. If the appellant or either party is unavailable to participate in the oral presentation within the 3-working-day period, the Director will convene the oral presentation without that party or affected person. The Director will issue a decision on the appeal within 3 working days of the oral presentation. If the Director is unavailable during this time period, the Director may designate a senior executive of the Office of Government Ethics to hear the oral presentation and decide the appeal. The notice of appeal, the record of the oral presentation, the decision on the appeal, and any other document considered by the Director or the Director's designee in connection with the appeal will be made a part of the record of the hearing.

(7) After closing the record, the administrative law judge will certify the entire record to the Director for decision. When so certifying the record, the administrative law judge will make a recommended decision, which will include his or her written findings of fact and conclusions of law with respect to material issues. After considering the certified record, the Director may issue a decision and an order, pursuant to paragraph (e) of this section.

(h) *Dismissal.* The Director may dismiss a proceeding under this section at any time, without a finding as to the alleged violation, upon a finding that:

(1) The employee or the agency has taken appropriate action to address the Director's concerns;

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(2) The employee has undertaken, or agreed in writing to undertake, measures the Director deems satisfactory; or

(3) A question has arisen involving the potential application of a criminal law.

(i) *Notice procedure.* The notices required by paragraphs (b)(1) and (f) of this section may be delivered by U.S. mail, electronic mail, or personal delivery. There will be a rebuttable presumption that notice sent by U.S. mail is received within 5 working days. If the agency does not promptly provide the Office of Government Ethics with an employee's contact information upon request, the notice may be sent to the agency's DAEO, who will bear responsibility for promptly delivering that notice to the employee and promptly notifying the Director after its delivery.

Subpart F—General Provisions

§ 2638.601 Authority and purpose.

(a) *Authority.* The regulations of this part are issued pursuant to the authority of titles I and IV of the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended) ("the Act").

(b) *Purpose.* These executive branch regulations supplement and implement titles I, IV and V of the Act and set forth more specifically certain procedures provided in those titles, and furnish examples, where appropriate.

(c) *Agency authority.* Subject only to the authority of the Office of Government Ethics as the supervising ethics office for the executive branch, all authority conferred on agencies in this subchapter B of chapter XVI of title 5 of the Code of Federal Regulations is sole and exclusive authority.

§ 2638.602 Agency regulations.

Each agency may, subject to the prior approval of the Office of Government Ethics, issue regulations not inconsistent with this part and this subchapter, using the procedures set forth in § 2635.105 of this chapter.

§ 2638.603 Definitions.

For the purposes of this part:

Act means the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended).

ADAEO or Alternate Designated Agency Ethics Official means an officer or employee who is designated by the head of the agency as the primary deputy to the DAEO in coordinating and managing the agency's ethics program in accordance with the provisions of § 2638.104.

Agency or agencies means any executive department, military department, Government corporation, independent establishment, board, commission, or agency, including the United States Postal Service and Postal Regulatory Commission, of the executive branch.

Agency head means the head of an agency. In the case of a department, it means the Secretary of the department. In the case of a board or commission, it means the Chair of the board or commission.

Confidential filer means an employee who is required to file a confidential financial disclosure report pursuant to § 2634.904 of this chapter.

Conflict of interest laws means 18 U.S.C. 202–209, and *conflict of interest law* means any provision of 18 U.S.C. 202–209.

Corrective action means any action necessary to remedy a past violation or prevent a continuing violation of this part, including but not limited to restitution, change of assignment, disqualification, divestiture, termination of an activity, waiver, the creation of a qualified diversified or blind trust, or counseling.

DAEO or Designated Agency Ethics Official means an officer or employee who is designated by the head of the agency to coordinate and manage the agency's ethics program in accordance with the provisions of § 2638.104.

Department means a department of the executive branch.

Director means the Director of the Office of Government Ethics.

Disciplinary action means those disciplinary actions referred to in Office of Personnel Management regulations and instructions implementing provisions of title 5 of the United States Code or provided for in comparable provisions applicable to employees not subject to title 5.

Employee means any officer or employee of an agency, including a special Government employee. It includes offi-

cers but not enlisted members of the uniformed services. It includes employees of a state or local government or other organization who are serving on detail to an agency, pursuant to 5 U.S.C. 3371, *et seq.* It does not include the President or Vice President. Status as an employee is unaffected by pay or leave status or, in the case of a special Government employee, by the fact that the individual does not perform official duties on a given day.

Executive branch includes each executive agency as defined in 5 U.S.C. 105 and any other entity or administrative unit in the executive branch. However, it does not include any agency, entity, office, or commission that is defined by or referred to in 5 U.S.C. app. sections 109(8)–(11) of the Act as within the judicial or legislative branch.

Government ethics laws and regulations include, among other applicable authorities, the provisions related to government ethics or financial disclosure of the following authorities:

- (1) Chapter 11 of title 18 of the United States Code;
- (2) The Ethics in Government Act of 1978 (Pub. L. 95–521, as amended);
- (3) The Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) (Pub. L. 112–105, as amended);
- (4) Executive Order 12674 (Apr. 12, 1989) as amended by Executive Order 12731 (Oct. 17, 1990); and
- (5) Subchapter B of this chapter.

Lead human resources official means the agency's chief policy advisor on all human resources management issues who is charged with selecting, developing, training, and managing a high-quality, productive workforce. For agencies covered by the Chief Human Capital Officers Act of 2002 (Pub. L. 107–296), the Chief Human Capital Officer is the lead human resources official.

Person includes an individual, partnership, corporation, association, government agency, or public or private organization.

Principles of Ethical Conduct means the collection of general principles set forth in § 2635.101(b) of this chapter.