

Office of Government Ethics

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training materials distributed and counseling services offered.

(b) Failure to timely file the report required by paragraph (a) of this section may be cause to invoke the procedures at subpart D of this part for correction of agency programs.

§ 2638.603 Reports of referral for possible prosecution.

(a) *In general.* Section 535 of title 28 of the United States Code imposes upon every agency a duty to report to the Attorney General any information, allegations or complaints relating to violations of title 18 of the United States Code involving Government officers and employees, including possible violations of 18 U.S.C. 207 by former officers and employees. Guidelines issued by the Attorney General require reporting of such allegations or complaints to the local office of the appropriate investigative agency, the United States Attorney for the district in which the violation occurred or is occurring and the appropriate division of the Department of Justice.

(b) *Report of referral.* When any matter involving an alleged violation of Federal conflict of interest law is referred pursuant to 28 U.S.C. 535, the agency shall concurrently notify the Director of the Office of Government Ethics of the referral and provide a copy of the referral document, unless such notification or disclosure would otherwise be prohibited by law.

(c) *Disposition reports.* (1) Where there has been notice that the matter reported under paragraph (b) of this section will not be prosecuted, the agency shall promptly notify the Director of that fact, the date of the decision and any disciplinary or corrective action initiated, taken or to be taken by the agency.

(2) When the agency is notified or learns from the Department of Justice that an indictment has been handed up and signed or an information has been filed, the agency shall promptly report that fact to the Director. Thereafter, the agency shall promptly notify the Director of the final disposition of the prosecution and of any disciplinary or corrective action initiated, taken or to be taken by the agency.

(3) When disciplinary or corrective action is initiated or is to be taken, the agency will notify the Director of the final disposition of the matter.

[55 FR 1670, Jan. 18, 1990, as amended at 55 FR 21847, May 30, 1990]

Subpart G—Executive Agency Ethics Training Programs

SOURCE: 65 FR 7279, Feb. 14, 2000, unless otherwise noted.

§ 2638.701 Overview.

Each agency must have an ethics training program to teach employees about ethics laws and rules and to tell them where to go for ethics advice. The training program must include, at least, an initial agency ethics orientation for all employees and annual ethics training for covered employees.

§ 2638.702 Definitions.

For purposes of this subpart:

Agency supplemental standards means those regulations published by an agency in concurrence with the Office of Government Ethics under 5 CFR 2635.105.

Employee includes officers of the uniformed services and special Government employees, as defined in 18 U.S.C. 202(a).

Federal conflict of interest statutes means 18 U.S.C. 202–203, 205, and 207–209.

Principles means the Principles of Ethical Conduct, Part I of Executive Order 12674, as modified by Executive Order 12731.

Standards means the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635.

§ 2638.703 Initial agency ethics orientation for all employees.

Within 90 days from the time an employee begins work for an agency, the agency must do the following:

(a) *Ethics materials.* The agency must give the employee:

(1) The Standards and any agency supplemental standards to keep or review; or

(2) Summaries of the Standards, any agency supplemental standards, and the Principles to keep.

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NOTE TO PARAGRAPH (a): If the agency does not give the employee the Standards and any agency supplemental standards to keep, the complete text of both must be readily available in the employee's immediate office area.

(b) *Contact persons.* The agency must give the employee the names, titles, and office addresses and telephone numbers of the designated agency ethics official and other agency officials available to advise the employee on ethics issues.

(c) *One hour to review.* The agency must give the employee at least one hour of official duty time to review the items described above. This one-hour requirement may be reduced by any amount of time the employee receives verbal ethics training in the same 90-day period.

§ 2638.704 Annual ethics training for public filers.

(a) *Covered employees.* Each calendar year, agencies must give verbal ethics training to employees who are required by 5 CFR part 2634 to file public financial disclosure reports.

(b) *Content of training.* Agencies are encouraged to vary the content of verbal training from year to year but the training must include, at least, a review of:

- (1) The Principles;
- (2) The Standards;
- (3) Any agency supplemental standards;
- (4) The Federal conflict of interest statutes; and
- (5) The names, titles, and office addresses and telephone numbers of the designated agency ethics official and other agency ethics officials available to advise the employee on ethics issues.

(c) *Length and presentation of training.* Employees must be given at least one hour of official duty time for verbal training. The training must be:

- (1) Presented by a qualified instructor; or
- (2) Prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape.

(d) *Availability of qualified instructor.* A qualified instructor must be available during and immediately after the training. Qualified instructors are:

- (1) The designated agency ethics official;
- (2) The alternate agency ethics official;
- (3) A deputy agency ethics official;
- (4) Employees of the Office of Government Ethics (OGE) designated by OGE; and
- (5) Persons whom the designated agency ethics official (or his or her designee) determines are qualified to respond to ethics questions raised during the training.

Example 1 to paragraph (d): An agency provides annual ethics training for public filers in a regional office by establishing a video conference link between the regional office and a qualified instructor in the headquarters office. The video link provides for direct and immediate communication between the qualified instructor and the employees receiving the training. Even though the qualified instructor is not physically located in the room where the training occurs, the qualified instructor is available.

Example 2 to paragraph (d): The agency described in the preceding example provides videotaped training instead of training through a video conference link. The employees viewing the videotape are provided with a telephone at the training site and the telephone number of a qualified instructor who is standing by during and immediately after the training to answer any questions. Under these circumstances, a qualified instructor is available.

Example 3 to paragraph (d): In the preceding example, if no telephone had been provided at the training site or if a qualified instructor was not standing by to respond to any questions raised, there would not be a qualified instructor available. Merely providing the phone number of the qualified instructor would not satisfy the requirement that a qualified instructor be available.

(e) *Exceptions.* Verbal training without a qualified instructor available or written training prepared by a qualified instructor will satisfy the verbal training requirement for a public filer (or group of public filers) if one hour of official duty time is provided for the training and:

- (1) The designated agency ethics official (or his or her designee) makes a written determination that it would be impractical to provide verbal training with a qualified instructor available; or
- (2) The employee is a special Government employee.

Example to paragraph (e)(1): The only public filer in the American Embassy in Ulan

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Bator, Mongolia is the Ambassador. Because of the difference in time zones and the uncertainty of the Ambassador's schedule, the designated agency ethics official for the State Department is justified in making a written determination that it would be impractical to provide the Ambassador with verbal training. In this case, the Ambassador may receive written training prepared by a qualified instructor.

§ 2638.705 Annual ethics training for other employees.

(a) *Covered employees.* Each calendar year, agencies must train the following employees:

- (1) Employees appointed by the President;
- (2) Employees of the Executive Office of the President;
- (3) Employees defined as confidential filers in 5 CFR 2634.904;
- (4) Employees designated by their agency under 5 CFR 2634.601(b) to file confidential financial disclosure reports;
- (5) Contracting officers, as defined in 41 U.S.C. 423(f)(5); and
- (6) Other employees designated by the head of the agency or his or her designee based on their official duties.

NOTE TO PARAGRAPH (a): Employees described above who are also public filers must receive ethics training as provided in § 2638.704.

(b) *Content of training.* The requirements for the contents of annual training are the same as the requirements in § 2638.704(b).

(c) *Length and presentation of training.* The training for covered employees must consist of:

- (1) A minimum of one hour of official duty time for verbal training at least once every three years. The verbal training must be presented by a qualified instructor or prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape; and
- (2) An amount of official duty time the agency determines is sufficient for written training in the years in which the employee does not receive verbal training. The written training must be prepared by a qualified instructor. The employee's initial ethics orientation may satisfy the written training requirement for the same calendar year.

(d) *Exceptions.* Written ethics training prepared by a qualified instructor will satisfy the verbal training requirement for a covered employee (or group of covered employees) if sufficient official duty time is provided for the training and:

- (1) The designated agency ethics official (or his or her designee) makes a written determination that verbal training would be impractical;
- (2) The employee is a special Government employee expected to work 60 or fewer days in a calendar year;
- (3) The employee is an officer in the uniformed services serving on active duty for 30 or fewer consecutive days; or
- (4) The employee is designated under paragraph (a)(6) of this section to receive training.

§ 2638.706 Agency's written plan for annual ethics training.

(a) The designated agency ethics official (or his or her designee) is responsible for directing the agency's ethics training program. The designated agency ethics official (or his or her designee) must develop a written plan each year for the agency's annual training program.

(b) The written plan must be completed by the beginning of each calendar year.

(c) The written plan must contain:

- (1) A brief description of the agency's annual training.
- (2) Estimates of the number of employees who will receive verbal training according to the following table:

| Employees who will receive verbal training | Number |
|--|--------|
| (i) Public filers. | |
| (ii) Employees other than public filers. | |

(3) An estimate of the number of employees who will receive written training according to the following table:

| Employees who will receive written training | Number |
|--|--------|
| Employees other than public filers who will receive training under § 2638.705(c)(2). | |

(4) Estimates of the number of employees who will receive written training instead of verbal training according to the following table:

| Employees who will receive written training instead of verbal training | Number |
|---|--------|
| (i) Public filers who qualify for the exception in § 2638.704(e)(1). | |
| (ii) Public filers who qualify for the exception in § 2638.704(e)(2). | |
| (iii) Employees other than public filers who qualify for the exception in § 2638.705(d)(1). | |
| (iv) Employees other than public filers who qualify for the exception in § 2638.705(d)(2). | |
| (v) Employees other than public filers who qualify for the exception in § 2638.705(d)(3). | |
| (vi) Employees other than public filers who qualify for the exception in § 2638.705(d)(4). | |

(d) The written plan may contain any other information that the designated agency ethics official believes will assist the Office of Government Ethics in reviewing the agency's training program.

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

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Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

- 2640.201 Exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans.
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 2640.203 Miscellaneous exemptions.
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Subpart C—Individual Waivers

- 2640.301 Waivers issued pursuant to 18 U.S.C. 208(b)(1).
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 2640.303 Consultation and notification regarding waivers.
 2640.304 Public availability of agency waivers.

AUTHORITY: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

SOURCE: 61 FR 66841, Dec. 18, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 2640.101 Purpose.

18 U.S.C. 208(a) prohibits an officer or employee of the executive branch, of any independent agency of the United States, of the District of Columbia, or Federal Reserve bank director, officer, or employee, or any special Government employee from participating in an official capacity in particular matters in which he has a personal financial interest, or in which certain persons or organizations with which he is affiliated have a financial interest. The statute is intended to prevent an employee from allowing personal interests to affect his official actions, and to protect governmental processes from actual or apparent conflicts of interests. However, in certain cases, the nature and size of the financial interest and the nature of the matter in which the employee would act are unlikely to affect an employee's official actions. Accordingly, the statute permits waivers of the disqualification provision in certain cases, either on an individual basis or pursuant to general regulation. Section 208(b)(2) provides that the Director of the Office of Government Ethics may, by regulation, exempt from the general prohibition, financial interests which are too remote or too inconsequential to affect the integrity of the services of the employees to which the prohibition applies. The regulations in this part describe those financial interests. This part also provides guidance to agencies on the factors to consider when issuing individual waivers under 18 U.S.C. 208 (b)(1) or (b)(3), and provides an interpretation of 18 U.S.C. 208(a).

§ 2640.102 Definitions.

For purposes of this part:

(a) *Diversified* means that the fund, trust or plan does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States and, in the case of an employee benefit plan, means that the plan's trustee has a written policy of varying plan investments.