

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



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LEGAL ADVISORY

TO: Designated Agency Ethics Officials and Human Resources Officials

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SUBJECT: New Job Aid: Overview of Education Requirements under the Revised
5 C.F.R. Part 2638, Subpart C

On November 2, 2016, the U.S. Office of Government Ethics (OGE) issued a comprehensive revision of 5 C.F.R. part 2638, the regulation that sets forth the elements and procedures of the executive branch ethics program. As part of its changes to the regulation, OGE augmented the requirements for agency ethics education programs, in order to strengthen the effectiveness of ethics training. To help ethics officials familiarize themselves with these new education requirements, which take effect January 1, 2017, OGE created the attached job aid, which compares various features of the primary ethics education requirements.

Ethics officials and human resources officials should be aware of a number of specific requirements that this regulation establishes. Some sections of the regulation establish entirely new requirements, and agencies will need to establish new systems to implement them. Other sections of the regulation improve upon existing requirements, and agencies will need to adapt their systems accordingly.

One new requirement is that agencies must issue notices to prospective employees in the written offers of employment regarding the agencies' ethics programs and applicable ethics requirements. 5 C.F.R. § 2638.303. Having received this notice, each prospective new hire will be able to make a conscious choice to either become a contributing part of an agency's strong ethical culture or decline the job offer. Generally, this notice can be inserted into the existing offer letters that human resources officials issue to new hires. However, regardless of which office is assigned by the agency to fulfill this new requirement, the notice language must be approved by the Designated Agency Ethics Official (DAEO).

Another new requirement is that agencies must issue notices regarding applicable ethics requirements to employees who are newly hired or promoted to supervisory positions. 5 C.F.R. § 2638.306. The notices emphasize that, in their new roles as supervisors, these employees will have heightened personal responsibility for advancing government ethics. *See* 5 C.F.R. § 2638.103. This notice must be issued within one year of appointment, which corresponds to the time period established in the regulations of the Office of Personnel Management for supervisory

training. *See* 5 C.F.R. § 412.202(b). In a number of agencies, for example, human resources officials already issue memoranda advising new supervisors of the requirement to complete supervisory training, and some agencies might reasonably decide to include the language of the supervisory ethics notice in these memoranda.

A third new requirement is that certain agency leaders must receive an additional ethics briefing around the time of appointment. 5 C.F.R. § 2638.305. This requirement applies to most civilians serving in Presidentially appointed, Senate-confirmed positions (PAS appointees), and supplements other applicable requirements. During this individualized briefing, the agency ethics official discusses the PAS appointee's basic recusal obligation, the mechanisms for recusal, the commitments made in the PAS appointee's ethics agreement, and the potential for conflicts of interest arising from any financial interests acquired after the nominee financial disclosure report was filed. The purpose of covering these important topics during the briefings is to ensure that PAS appointees will be able to comply immediately with applicable ethics requirements in their new positions.

Significantly modifying an existing requirement for initial ethics orientation, the regulation now requires new employees to receive initial ethics training. 5 C.F.R. § 2638.304. This new requirement strengthens the ethics program by requiring that most new hires complete interactive ethics training in addition to receiving written ethics materials. This training, which covers certain key ethical concepts, is intended to instill both an understanding of applicable requirements and an appreciation of the importance of maintaining a strong ethical culture in the executive branch.

Another modification to an existing requirement involves annual ethics training for confidential financial disclosure filers and certain other employees. 5 C.F.R. § 2638.307. The revised regulation replaces the former requirement, which required only an informal written refresher in two out of three years, with a new requirement for interactive ethics training every year.

A third modification to an existing requirement involves annual ethics training for public financial disclosure filers. 5 C.F.R. § 2638.308. The revised regulation increases the requirements for the annual ethics training that agencies provide to their high-level officials. Top officials serving at Executive Schedule Levels 1 and 2 must receive live ethics training every year. Other high-level officials, including civilian PAS appointees and others, must receive live ethics training at least once every two years and interactive ethics training in alternate years. Lower-level public filers must receive interactive ethics training every year.

Human resources officials with questions regarding this advisory should contact their agency's DAEO. DAEOs with questions may contact their OGE Desk Officer for additional assistance.

Attachment

Overview of Government Ethics Education Requirements under Subpart C of 5 C.F.R. Part 2638 (effective January 1, 2017)

Requirement	Overview	Format ¹	Content	Deadline	Tracking
Notice to prospective employees § 2638.303	Written employment offer must include certain ethics-related information	Written	Statement regarding agency's commitment to gov't ethics; notice regarding standards of conduct and criminal conflicts statutes; how to obtain additional information; time frame for completing initial ethics training; financial disclosure requirements (if applicable)	When offer letter is issued	DAEO must review the written procedures each year; in an agency with 1,000 or more employees, any office not under the DAEO's supervision that performs this duty must annually provide the DAEO a written summary of procedures and confirmation with reasonable assurances that the procedures have been implemented
Initial ethics training § 2638.304	Each new employee at the agency ² must complete initial ethics training and receive certain written materials*	Interactive	Presentation must focus on ethics laws and regulations that the DAEO deems appropriate for the audience; must address concepts related to financial conflicts of interest, impartiality, misuse of position, and gifts	Within 3 months of appointment**	
Notice to new supervisors § 2638.306	New civilian supervisors must be provided certain ethics-related information	Written	Contact info. for agency's ethics office; text of § 2638.103; Principles of Ethical Conduct; other information DAEO deems necessary	Within 1 year of appointment	
Additional ethics briefing for certain agency leaders § 2638.305	New PAS appointees must be briefed by a qualified presenter on immediate ethics obligations ³	Live	Potential for conflicts arising from any new financial interests not previously disclosed; basic recusal obligation; ethics agreement commitments; process for recusals; instructions for completing initial ethics training	After confirmation, not more than 15 days after appointment**	DAEO must maintain a record of the briefing date while appointee serves in the position
Annual training: confidential filers and certain others § 2638.307	Confidential filers and certain others must receive annual ethics training that meets specified requirements ⁴ and certain written materials*	Interactive	Presentation must focus on ethics laws and regulations that the DAEO deems appropriate for the audience; must address concepts related to financial conflicts of interest, impartiality, misuse of position, and gifts	December 31	Employee must certify that training has been completed; a presenter with personal knowledge may record an employee's completion instead, as may an automated training system that tracks completion automatically
Annual training: public filers § 2638.308	Public filers must receive annual ethics training that meets specified requirements and certain written materials*	<i>EX Levels 1 & 2: Live</i>	Presentation must focus on ethics laws and regulations that the DAEO deems appropriate for the audience; must address concepts related to financial conflicts of interest, impartiality, misuse of position, and gifts	December 31	
		<i>Other civilian employees identified in § 103(c) of the EIGA stationed in the U.S.: Live every 2 years, interactive in other years</i>			
		<i>Other public filers: Interactive</i>			

* Written materials consist of a summary of the Standards of Conduct, relevant provisions of supplemental agency regulations (or summary), other written materials the DAEO determines should be included, and instructions for contacting the agency's ethics office. Written instructions for accessing these materials can be provided in lieu of the materials themselves.

** For special Gov't employees serving no more than 60 days a year on a board, commission, or committee, it must be provided before (or, in the case of initial ethics training, at) their first meeting.

¹ Live ethics training is defined at § 2638.302(a); interactive ethics training is defined at § 2638.302(b).

² The DAEO, in the DAEO's sole and exclusive discretion, may exclude a non-supervisory position at or below the GS-8 grade level, or the equivalent, from the requirement to complete interactive training, provided that certain conditions are met and they receive written training materials.

³ The DAEO, in the DAEO's sole and exclusive discretion, may elect to exclude experienced members of the career Foreign Service or uniformed services from this requirement.

⁴ Special Government employees who are expected to work no more than 60 days in a calendar year and officers in the uniformed services serving on active duty for no more 30 consecutive days may be authorized to receive the written materials only, when the DAEO, in the DAEO's sole and exclusive discretion, determines that providing interactive training is impracticable.