

5 C.F.R. Part 2638

The Executive Branch Ethics Program



Part II: Government Ethics Education

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Overview of Revised Part 2638

Subpart A – Mission and Responsibilities

- Mission
- Government ethics responsibilities of: employees, supervisors, agency ethics officials, lead human resources officials, IGs, agency heads, and OGE

Subpart C – Government Ethics Education

Subpart D – Correction of Executive Branch Agency Ethics Programs

Subpart E – Corrective Action Involving Individual Employees

Subpart B – Procedures of the Executive Branch Ethics Program

- Collection of financial disclosure reports
- Records and reports (records generally, notice of referrals, annual agy. reports)
- Written guidance
- Formal advisory opinions
- Presidential transition planning

Subpart F – General Provisions

- Authority and purpose
- Agency regulations
- Definitions
- Key program dates

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Training: Methods of Delivery

Current

Verbal vs. written

Verbal: must be presented by a qualified instructor or prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape.

5 C.F.R. §§ 2638.704(c), 2638.705(c)(1)

New

Live vs. interactive

Live: the presenter personally communicates a substantial portion of the material at the same time as the employee being trained is receiving it, even if part of the training is prerecorded or automated.

Interactive: employee being trained must take an action with regard to the subject of the training. (Note: "Live" training will also satisfy the requirement for "interactive" training.)

5 C.F.R. § 2638.302

Training: Content to Be Covered

Current

At least a review of all of the following:

- Principles of Ethical Conduct
- Standards of Ethical Conduct for Employees of the Executive Branch
- Any agency supplemental standards
- Federal COI statutes
- Names and contact information for agency ethics officials

5 C.F.R. §§ 2638.704(b), 2638.705(b)

New

Ethics laws and regulations DAEO deems appropriate for the audience

Must address concepts related to:

- Financial conflicts of interest
- Impartiality
- Misuse of position
- Gifts

5 C.F.R. §§ 2638.304(e)(1), 2638.307(e)(1), 2638.308(f)(1)

Initial Ethics Training

	<i>Current</i> 5 C.F.R. § 2638.703	<i>New</i> 5 C.F.R. § 2638.304
Format:	Written training	Interactive training*
Presentation content:	Presentation not required	Focus determined by DAEO, but must address the four key concepts
Written materials:	Standards and any agency supplementals; or summaries of the Standards, agency supplementals, Principles, instructions for contacting ethics office	Required: Summaries of Standards, agency supplementals (or summaries), other materials as determined by DAEO, instructions for contacting ethics office
Deadline:	Within 90 days of beginning work	Within 3 months of appointment**

* DAEO may exclude certain non-supervisory positions at or below GS-8 from interactive training requirement; must still provide written materials

** SGEs expected to serve no more than 60 days in a calendar year on a board, commission, or committee, may receive initial ethics training any time before, or at the beginning of, the employee's first meeting

Annual Training: Public Filers

	<i>Current</i> 5 C.F.R. § 2638.704	<i>New</i> 5 C.F.R. § 2638.308
Format:	Verbal (qualified instructor must be available during and immediately after)	<u>EX Levels I or II:</u> live every year <u>Other civilians identified in § 103(c) of the EIGA and stationed in the U.S.:</u> live every 2 years; interactive in other years <u>All others:</u> interactive
Presentation content:	Principles, Standards, agency supplementals, COI statutes, contact info. for ethics officials	Focus determined by DAEO, but must address the four key concepts
Written materials:	Written materials not required	Required: Summaries of Standards, agency supplementals (or summaries), other materials as determined by DAEO, instructions for contacting ethics office
Deadline:	December 31	December 31

Annual Training: 450 Filers, Others

	<i>Current</i> 5 C.F.R. § 2638.705	<i>New</i> 5 C.F.R. § 2638.307
Format:	Varies by year (verbal/written/written)	Interactive training*
Presentation content:	Principles, Standards, agency supplementals, COI statutes, contact info. for ethics officials (provided in "verbal" year)	Focus determined by DAEO, but must address the four key concepts
Written materials:	Principles, Standards, agency supplementals, COI statutes, contact info. for ethics officials (provided in "written" years)	Required: Summaries of Standards, agency supplementals (or summaries), other materials as determined by DAEO, instructions for contacting ethics office
Deadline:	December 31	December 31

* SGEs expected to work no more than 60 days in a calendar year and officers in the uniformed services serving on active duty no more 30 consecutive days may be authorized to receive the written materials only, when the DAEO determines that providing interactive training is impracticable.

Ethics Briefings

Agencies will be required to provide ethics briefings to certain agency leaders around the time of appointment.

5 C.F.R. § 2638.305



Ethics Briefings



New

Content:

- If new reportable financial interests were acquired, address the potential for conflicts of interest arising from those interests
- Counsel on the basic recusal obligation
- Explain commitments made in the ethics agreement and ensure that the individual understands the requirements for compliance
- Establish a process by which recusals will be achieved
- Provide instructions and deadline for completing initial ethics training (*unless the training is provided prior to or during the briefing*)

5 C.F.R. § 2638.305(f)

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Notice to Prospective Employees



New

Agencies will be required to provide prospective employees with notice of the ethical obligations associated with their positions.

5 C.F.R. § 2638.303

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Notice to Prospective Employees

New

Content:

- Statement regarding the agency's commitment to government ethics
- Notice that the individual will be subject to the Standards of Conduct and the conflict of interest statutes
- Contact information for an appropriate agency ethics office or explanation of how to obtain additional information
- Notice of time frame for completing initial ethics training (*where applicable*)
- Statement regarding financial disclosure requirements; explanation that report must be filed within 30 days of appointment (*where applicable*)

5 C.F.R. § 2638.303(a)

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Notice to New Supervisors

New

Agencies will be required to provide written information to employees within one year of initial appointment to a supervisory position.

5 C.F.R. § 2638.306

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Notice to New Supervisors



New

Content:

- Contact information for the agency's ethics office
- Text of § 2638.103, Government ethics responsibilities of supervisors
- Copy of the Principles of Ethical Conduct (*alternatively, may be distributed through a hyperlink or web address*)
- Other information the DAEO deems necessary for new supervisors

5 C.F.R. § 2638.306(c)

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Tracking annual training



New

Employee must confirm completion in writing. However:

- A DAEO or other presenter with knowledge that training was completed may record the employee's completion instead.
- For automated systems that deliver interactive training, the DAEO may deem the employee to have confirmed if completion is tracked automatically.

Applies to:

- § 2638.307 Annual ethics training for 450 filers and certain others
- § 2638.308 Annual ethics training for 278 filers

5 C.F.R. §§ 2638.307(f) and 2638.308(g)

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Tracking notices, initial training



New

Applies to:

- Notices to new employees (§ 2638.303)
- Initial ethics training (§ 2638.304)
- Notices to new supervisors (§ 2638.306)

Requirement: Agency must establish written procedures, which the DAEO must review each year

Agencies w/ 1,000+ employees: Offices not under DAEO supervision that accomplish the above tasks must annually provide the DAEO:

- A written summary of procedures
- Written confirmation, with reasonable assurances, that the procedures have been implemented

5 C.F.R. §§ 2638.310, 2638.303(c) 2638.304(f), and 2638.306(d)

Thank You

