

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



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PROGRAM ADVISORY

TO: Designated Agency Ethics Officials and Human Resources Officials

FROM: Dale A. Christopher, Jr.
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SUBJECT: New Requirements Effective January 1, 2017

On November 2, 2016, the U.S. Office of Government Ethics (OGE) issued a final rule amending the regulation that establishes requirements for agency ethics programs. *See* Executive Branch Ethics Program Amendments, 81 Fed. Reg. 76,271 (Nov. 2, 2016) (to be codified at 5 C.F.R. part 2638). Among other changes, it establishes two new requirements that in most cases will necessitate coordination between agency ethics officials and human resources officials. These requirements involve notices that must be issued to prospective new employees and to new supervisors.

1. Notice to Prospective New Employees

Effective January 1, 2017, the amended regulation requires that written offers of employment for positions covered by the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), 5 C.F.R. part 2635, must include notices of the ethical obligations associated with the positions. 81 Fed. Reg. at 76,780 (to be codified at 5 C.F.R. § 2638.303). OGE's preference is for the notice to be included in the body of the offer letter as a way to signal to the new hire that the agency is committed to its ethics program; however, an agency may include the notice in an attachment instead.

At the election of the Designated Agency Ethics Official (DAEO), the DAEO may specify the language of the notice or approve the language drafted by other agency officials. The amended regulation specifically requires that the following information be included in the notice:

- (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;¹
- (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.

Id. (to be codified at 5 C.F.R. § 2638.303(a)).

The following is a sample notice for an offer letter to a prospective new employee:²

The department is committed to the highest ethical standards and, as an employee, you will be covered by the criminal conflict of interest statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. You will be required to complete new employee ethics training within 3 months of your appointment. This position is covered by public financial disclosure requirements, and you will be required to complete a new entrant public financial disclosure report within 30 days of your appointment. You may contact the department's ethics office for additional information on applicable ethics requirements at 202-555-5555 or ethics@department.gov.

2. Notice to New Supervisors

Effective January 1, 2017, the amended regulation also requires agencies to provide a specific notice to each civilian employee who is required to receive supervisory training under U.S. Office of Personnel Management (OPM) regulations at 5 C.F.R. § 412.202(b). Id. at 76,282 (to be codified at 5 C.F.R. § 2638.306). This requirement applies only to the employee's initial appointment to a supervisory position. If the employee has previously served in a supervisory position in an agency, issuance of the notice is a model practice, but is not mandatory. For covered employees, the notice must be issued within the first year of the employee's appointment to the supervisory position, which tracks the time period for supervisory training under OPM's regulation. See id. (to be codified at 5 C.F.R. § 2638.306(b)); 5 C.F.R. § 412.202(b).

There is no particular required format for the notice; it can be issued, for example, in a letter, memorandum, or email message. The language of the notice must be approved by the

¹ Agencies can comply with this requirement by providing a hyperlink to, or the address of, a Web site containing a list of agency ethics offices and an explanation as to the organizational components served by each office.

² While this sample notice complies with content requirements, agencies may tailor the language of their notices to reflect their particular agency's communication style and to include any necessary additional information, such as notifying the prospective new employee of the agency's supplemental standards of conduct regulation.

DAEO or the DAEO's designee. The regulation specifically requires that the following information be included in the notice:

- (1) Contact information for the agency's ethics office;³
- (2) The text of § 2638.103, which reads: "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."
- (3) A copy of, a hyperlink⁴ to, or the address of a Web site, containing the Principles of Ethical Conduct;⁵ and
- (4) Any other information the DAEO deems necessary for new supervisors.

81 Fed. Reg. at 76,282 (to be codified at 5 C.F.R. § 2638.306(c)).

The following is a sample notice to a new supervisor:⁶

Congratulations on your initial appointment to a supervisory position, which comes with important new responsibilities. The Designated Agency Ethics Official wants you to be aware that a government-wide ethics regulation, 5 C.F.R. § 2638.103, imposes the following responsibilities on all federal 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.

³ As with the notices to new employees, agencies can comply with this requirement by providing a hyperlink to, or the address of, a Web site containing a list of agency ethics offices and an explanation as to the organizational components served by each website.

⁴ Agencies are welcome, but not required, to use the following link to the Principles of Ethical Conduct on OGE's website:
[https://www.oge.gov/Web/OGE.nsf/0/73636C89FB0928DB8525804B005605A5/\\$FILE/14%20General%20Principles.pdf](https://www.oge.gov/Web/OGE.nsf/0/73636C89FB0928DB8525804B005605A5/$FILE/14%20General%20Principles.pdf)

⁵ Alternatively, the agency may include the Principles of Ethical Conduct in the notice or as an attachment to the notice.

⁶ As with the sample notice to new employees, this sample notice complies with content requirements; however, agencies may tailor the language of their notices to reflect their particular agency's communication style and to include any necessary additional information.

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.

To refresh your understanding of the ethical values underlying federal service, you should review the attached copy of the Principles of Ethical Conduct. For additional information on applicable ethics requirements, you may contact the department's ethics office at 202-555-5555 or ethics@department.gov.

3. Tracking

Agencies must establish written procedures to ensure that appropriate agency personnel distribute each of these required notices. 81 Fed. Reg. at 76,280, 76,282 (to be codified at 5 C.F.R. §§ 2638.303(c), 2638.306(d)). The DAEO must review the procedures each year, in order to ensure that the agency is carrying out the requirements. Id.

An additional requirement applies to any agency that has 1,000 or more employees. Id. The requirement applies if any office(s) not under the DAEO's supervision within such an agency has responsibility for distributing some or all of these notices.⁷ Id. In that event, the office(s) must submit the following materials to the DAEO by January 15 each year:

- (1) A written summary of procedures that office has established to ensure compliance with the notice requirements; and
- (2) Written confirmation that there is a reasonable basis⁸ for concluding that the procedures have been implemented.

Id. at 76,284 (to be codified at 5 C.F.R. § 2638.310).

⁷ In many cases, this responsibility will fall to the agency's human resources offices. In such cases, the agency's lead human resources official would be well advised to proactively establish a procedure for meeting the certification requirement.

⁸ This standard does not require individualized tracking by name of the issuance of the relevant notice to each covered employee; rather, it requires a good-faith belief based on the exercise of due diligence that the various responsible offices are generally aware of the notice requirement, have established distribution procedures, and are making reasonable efforts to issue the notices.