

# NIH Policy Manual

## 2400-05 - Ethics Training

**Issuing Office:** OD/NEO Phone: [\(301\) 402-6628](tel:3014026628)

**Approving Official(s):** DDM

**Release Date:** 4/22/2009 ?

Transmittal Notice

1. **Explanation of Material Transmitted:** This new chapter implements the rules that NIH employees are subject to regarding annual ethics training and new employee ethics orientation. This chapter is part of the NIH Ethics Manual (in the 2400 series of NIH policy chapters). It incorporates some information from the now obsolete NIH Manual Chapter 2300-735-4 regarding interactions with outside organizations.
2. **Filing Instructions:**

**Remove:** N/A

**Insert:** NIH Manual Chapter 2400-05 dated 04/22/09

**PLEASE NOTE:** For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Manual System, contact the Office of Management Assessment (OMA) on (301) 496 4606.
- Online information, enter this URL: <http://oma.od.nih.gov/manualchapters>

### A. Purpose

The National Institutes of Health (NIH), in the US Department of Health and Human Services (HHS), supports a strong ethics program. Each Federal agency must implement an ethics training program designed to ensure that all of its employees are aware of the Federal conflict of interest statutes and applicable standards of ethical conduct. Such training shall consist of an ethics orientation for all employees new to the NIH, and annual ethics training for covered employees. This chapter establishes the policies pertaining to required new employee ethics orientation and annual ethics training pursuant to Executive Order 12674 (April 12, 1989) as modified by Executive Order 12731 (October 17, 1990) and 5 CFR Part 2638.

For additional information on authorities and references, see [NIH Manual 2400-01](#)

[Introduction to Government Ethics](#) at the NIH (6/18/08).

## **B. Covered Employees**

This chapter applies to all Civil Service and Commissioned Corps employees, including employees in the General Schedule system, Federal Wage system, Senior Executive/Scientific Service, Senior Level, and the Senior Biomedical Research Service. Coverage also extends to employees appointed under Title 42, and persons working at NIH under Intergovernmental Personnel Act (IPA) assignments (both detailees and appointees).

This chapter does not apply to contract personnel, Non-FTEs, or Special Government Employees (SGEs) who provide services on 130 days or less during any period of 365 days. For ethics training policy pertaining to SGEs, refer to [NIH Manual 1810-1](#) Procedures for Avoiding Conflict of Interest for NIH Special Government Employee (SGE) Advisory Committee Members.

## **C. Definitions Relevant to Ethics Training**

1. **Verbal training** includes an in-person presentation by a qualified instructor; a live or previously recorded presentation viewed via teleconferencing; computer based training; or a presentation delivered by other recorded means. The NIH web based new employee ethics orientation and the annual ethics training modules managed by the NIH Ethics Office (NEO) constitute verbal training.
2. **Written training** includes distribution of written materials. Written materials may contain a summary of the ethics principles, a copy of the Standards of Ethical Conduct for Employees of the Executive Branch, handouts prepared by the Department of Health and Human Services (HHS) Office of the General Counsel/Ethics Division (OGC/ED), or other materials prepared by the Institute/Center (IC) Ethics Office staff. Written materials must be approved by the HHS Designated Agency Ethics Official (DAEO) or his/her designee, i.e., staff in the OGC/ED at NIH.
3. **A qualified instructor** is a person who has sufficient training, experience, and expertise in the ethics field to be able to answer questions correctly. Qualified instructors include:
  - a. The Designated Agency Ethics Official (DAEO);
  - b. The alternate agency ethics official;
  - c. A deputy agency ethics official
  - d. Persons whom the DAEO or his/her designee determines are qualified to respond to ethics questions raised during the training. This includes Deputy Ethics Counselors (DECs), Ethics Coordinators (ECs), and Ethics Specialists if they attend the annual HHS DEC Workshop or other appropriate training so they are knowledgeable enough to answer questions. DECs have the authority to determine whether their staff members are sufficiently knowledgeable to meet the definition of "qualified instructor."

4. **Immediately available** means that the qualified instructor is either in the room where the training is taking place, or available via phone to the individual completing his/her training so questions can be answered during the training time period. Available via electronic mail or facsimile does not qualify as immediately available.

## D. New Employee Ethics Orientation

1. **Regulatory Requirement:** By regulation (5 CFR Section 2638.703), agencies are required to provide a New Employee Ethics Orientation to all employees new to the agency within 90 days of the employee entering on duty at the agency. In this context, agency means the NIH therefore employees who transfer between ICs are not required to complete the NIH New Employee Ethics Orientation. The new employee is given:
  - a. The OGE Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635);
  - b. The HHS Supplemental Standards of Ethical Conduct (5 CFR 5501) and HHS Supplemental Financial Disclosure Requirement (5 CFR 5502), and;
  - c. Names, titles, office address and phone number of the HHS Designated Agency Ethics Official (DAEO) and the Institute/Center (IC) [Deputy Ethics Counselor](#) (DEC) (<http://ethics.od.nih.gov/decs.pdf>) and other [ethics staff](#) (<http://ethics.od.nih.gov/coord.pdf>). Links to the names on the NIH Ethics Program web site are acceptable.
2. **NIH Policy:** All employees new to the NIH are required to complete the online NIH New Employee Ethics Orientation. Employees new to the NIH will receive a letter explaining the NIH New Employee Orientation Web site, per the NIH Orientation Program requirements. See [NIH Manual 2300-935](#), NIH Orientation Program (dated 9/1/03). The NIH orientation web site contains ethics information and links to the New Employee Ethics Orientation on the NIH Ethics Program web site. The NIH Orientation is not the same as New Employee Ethics Orientation. Employees will complete both.

To confirm that employees new to the NIH receive all the required ethics information, Ethics Office staff will also provide a handout to new employees containing the name of their Deputy Ethics Counselor and other Institute/Center (IC) ethics staff, and the links to the [NIH Ethics Program web site](#) and the [Standards of Ethical Conduct](#). This information may also be provided during the routine new employee orientation conducted by the Office of Human Resources. Ethics Office staff may provide personal consultation to employees new to their IC as desired, including to employees transferring from other ICs. Any additional training material distributed must be reviewed by the OGC/ED if it is intended to replace any approved material noted above. The on-line [New Employee Ethics Orientation](#) is accessible via the NIH Ethics Program web site, on the Training page.

## E. Annual Ethics Training

1. **Regulatory Requirement:** By regulation (5 CFR Sections 2638.704 and 2638.705), agencies are required to provide annual ethics training to covered employees. Annual ethics training shall include a review of the following information. Additional information may be added to vary the training. Full text or appropriate summaries may be used.
  - a. The Principles of Ethical Conduct;
  - b. The OGE Standards of Ethical Conduct for Employees of the Executive Branch;
  - c. The HHS Supplemental Standards of Ethical Conduct and HHS Supplemental Financial Disclosure Requirements;
  - d. The conflict of interest statutes; and
  - e. Names, titles, office address and phone number of the HHS Designated Agency Ethics Official (DAEO) and the Institute/Center (IC) Deputy Ethics Counselor and other ethics staff (a link to the names on the NIH Ethics Program web site is acceptable).

**Public Financial Disclosure Report Filers:** All employees required to file the Public Financial Disclosure Report (SF-278) must receive verbal training with a qualified instructor immediately available every year. The web-based NIH Ethics Training qualifies as verbal training. Employees must be permitted to use sufficient official time to complete the training at times when the qualified instructor (e.g., the DEC or ethics specialist) is immediately available. DEC's may designate times during which these covered employees must complete training to guarantee the immediate availability of a qualified instructor, e.g., during specific hours each day. DEC's may also be physically present to meet the requirement for immediately available.

**Confidential Financial Disclosure Report Filers and Other Trainees:** Employees who file the Confidential Financial Disclosure Report (OGE 450) and others identified by the DEC are required to receive verbal training during the first year they are identified as a filer/trainee, and at least every third year thereafter. Verbal training for this group may be accomplished as outlined above for employees who file the SF 278.

2. **NIH Policy:**
  - a. All NIH employees (other than Special Government Employees serving on federal advisory committees) are required to receive the training using the material prescribed by the NIH DEC and reviewed and approved by the HHS Office of the General Counsel, Ethics Division (OGC/ED) in each calendar year. Financial disclosure filers (public and confidential) will receive training as outlined above, i.e., verbal or written.
  - b. Ethics Office staff are required to track the number and names of employees who receive each type of training (see the Tracking and Reporting section,

below).

- c. The NIH Ethics Office will notify the IC Ethics Office staff when the training materials are available.
- d. For non-financial disclosure filers, IC DEC's have the authority to determine, on a case by case basis, who in their IC may be excluded from the annual training requirement due to unusual circumstances. For questions regarding whether a particular scenario might qualify as an unusual circumstance, contact the NEO.

## **F. Regulatory Exceptions to the Requirements for Training**

1. **Training for Public Filers:** Verbal training without a qualified instructor 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 time is provided for the training, and one of the following is true:
  - a. The DAEO or designee makes a written determination that it would be impractical to provide verbal training with a qualified instructor available, or
  - b. The employee is a special Government employee.

If either of these situations is present, the employee's DEC will confer with OGC/ED and the NIH Ethics Office, and will retain documentation of any permission granted to provide written instead of verbal training in the ethics file for six years. DEC's must track the number of employees who receive training under this exception. This option will be used very rarely, if ever, at the NIH, since generally, NIH employees are working in time zones which overlap with the normal duty hours at the main NIH campus, or are not permanently assigned to distant areas of the world.

*Example:* An NIH scientist who is assigned to work in a country in Asia is a member of the Senior Executive Service and therefore required to complete annual verbal training with a qualified instructor available. The foreign country is several time zones away from the DEC so it would be impractical to require the employee to complete his/her training at a time when the DEC is immediately available. In this case, the employee may receive written training prepared by a qualified instructor, or use the web-based verbal training without a qualified instructor immediately available. The IC DEC will confer with OGC/ED and the NEO, will document the exception, and will maintain the exception documentation in the employee's ethics file for the required time frame.

2. **Training for Confidential Filers and Others:** There may be situations in which providing the required verbal training for confidential filers and others may be problematic. Other than for Special Government Employees, NIH expects this exception would rarely be used. DEC's must track the number of employees who receive training under this exception. 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 and one of the following is true:

- a. The DAEO or designee determines in writing that verbal training would be impractical.
- b. The employee is a Special Government Employee expected to work 60 or fewer days in a calendar year.
- c. The employee is an officer in the Uniformed Services serving on active duty for 30 or fewer consecutive days (e.g., on duty for such a short time that verbal training is impractical).
- d. The employee does not file a confidential financial disclosure report but was designated by the DEC to receive annual ethics training.

*Example 1:* Members of an IC's advisory council may be provided written ethics training every year.

*Example 2:* An employee who files a confidential financial disclosure report is on extended temporary duty in a remote area with limited access to the internet, and is not expected to return to an area with internet access during the training period. The DEC may determine that it is impractical to expect this employee to complete the web based training without significant problems. The DEC documents in writing that this employee will receive written training provided by the ethics staff rather than require completion of the web based modules.

## **G. Tracking and Reporting Ethics Training**

Regulation requires ethics officials to track annual ethics training by type of training, e.g., verbal or written, and whether the employee completes annual training or new employee orientation. This information must be readily available to complete reporting requirements, e.g., annual agency ethics questionnaire or other reports requested by HHS or the Office of Government Ethics.

## **H. Refusal to Complete Training**

Employees covered by this chapter are responsible for becoming familiar with and observing all ethics laws, regulations, policies, and principles which pertain to them, including completing their required new employee ethics orientation or annual training in a timely manner. Refusal to do so constitutes inability to adhere to the requirements of their position. Failure to observe any of the requirements set forth in this chapter may be cause for disciplinary action. See [NIH Manual Chapter 2400-08, Managing Employee Non-Compliance with Government Ethics Requirements \(8/15/08\)](#).

## I. Records Retention and Disposal

**Records Retention and Disposal:** All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of the National Archives and Records Administration (NARA) General Records Schedule 25, Items 8a and b – Ethics Program Records. All other non-related records should be retained and disposed of under the authority of the [NIH Manual Chapter 1743](#), “Keeping and Destroying Records,” Appendix 1, NIH Records Control Schedule.

*NIH e-mail messages:* NIH e-mail messages (messages, including attachments, that are created on the NIH computer systems or transmitted over the NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Officer for additional information.

All e-mail messages are considered Government property, and if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, the NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to the Congressional Oversight Committees, if requested, and are subject to the Freedom of Information Act requests. Since most e-mail systems have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

## J. Internal Controls

1. **Office Responsible for Reviewing Internal Controls Relative to this Chapter (Issuing Office):** Through this manual issuance, the NIH Ethics Office is responsible for ensuring that internal controls are implemented and working.
2. **Frequency of Review:** Ongoing, annual review.
3. **Method of Review:** The NEO will maintain oversight and ensure effective implementation and compliance with this policy by monitoring the completion of new employee ethics orientation and annual ethics training with the Institutes and Centers via automated computer based recording and through the reporting requirements of the Office of Government Ethics Annual Questionnaire.
4. **Review reports are sent to:** The NIH Deputy Director, the NIH Deputy Ethics Counselor and the Deputy Director of Management. Issues of special concern will be brought to the immediate to the attention of the NIH Deputy Ethics Counselor.

## **K. Additional Information**

Employees should initially direct their questions to their IC's [Deputy Ethics Counselor](#) or [Ethics Coordinator/Specialist](#). The names and phone numbers of your DEC and ethics staff are available from your IC's Executive Office and on the [NIH Ethics Program web site](#).

**See the introductory chapter NIH Manual Chapter 2400-01, Introduction to Government Ethics at the NIH (6/18/08) for information regarding relevant Authorities and References (Section D).**