

NIH Policy Manual

2400-08 - Managing Employee Non-Compliance with Government Ethics Requirements

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

Approving Official(s): DDM

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Transmittal Notice

1. **Explanation of Material Transmitted:** This new chapter implements the NIH policy regarding managing employee non-compliance with Government ethics requirements. This chapter is part of the new NIH Ethics Manual (in the 2400 series of NIH policy chapters).
2. **Filing Instructions:**

Remove: N/A

Insert: NIH Manual Chapter 2400-08 dated 08/15/08.

PLEASE NOTE: For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Manual System, contact the Office of Management Assessment, OM, 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 an active and strong ethics program. To strengthen that program, the NIH promotes compliance among employees, and supports efforts to obtain compliance. The purpose of this chapter in the NIH Ethics Manual is to define policy and establish guidelines governing referral of employees to supervisors for appropriate remedial action, when warranted, due to employee non-compliance with Federal statutes and regulations regarding standards of ethical conduct and conflicts of interests. In addition, this chapter provides guidance on how allegations of conflicts of interests and ethics violations are to be handled among the Institutes and Centers (IC) Ethics Offices, the NIH Ethics Office (NEO), the Office

of the General Counsel Ethics Division (OGC), and the Office of Management Assessment (OMA).

B. Coverage

This chapter applies to all employees and individuals as outlined in the introductory chapter, [NIH Manual 2400-01](#) Introduction to Government Ethics at the NIH (6/18/08). Contract employees are not subject to these guidelines.

C. Authority to Determine Compliance

The Deputy Ethics Counselor (DEC) shall inform all employees within his/her area of authority of the individual responsibility to conduct themselves and the business of the Government in a manner which is consistent with the conflict of interest statutes and Government-wide and HHS-specific ethical conduct regulations. The DEC is the primary authority to review the information provided to determine whether the conflict of interest statutes and/or ethical conduct regulations were violated. The DEC will determine whether any corrective action taken by an employee is sufficient to bring the employee into compliance with applicable statutes and regulations. Lastly, the DEC will enforce the conflict of interest statutes and regulations through immediate referral of potential criminal conduct to the Division of Program Integrity in OMA, and with respect to non-criminal conduct, to the employee's supervisor for administrative action.

The supervisor has a duty to monitor employee conduct and enforce compliance with the conflict of interest statutes and ethical conduct regulations. Supervisors who are unsure of whether employee conduct is in compliance with applicable rules should refer the matter to their [IC DEC](#) for review.

D. Policy

All ethics officials and supervisors shall ensure that employees adhere to the highest standards of ethical conduct. Employees are required to comply with all Federal statutes, and Government-wide and HHS-specific ethical conduct regulations, including, but not limited to, those covering training, financial disclosure, outside activities, prohibited financial holdings, and acceptance of awards. Moreover, to ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee shall respect and adhere to the fundamental principles of ethical service.

Criminal Non-Compliance: If the DEC's preliminary review of the relevant facts gives him or her reasonable grounds to believe that a criminal statute may have been violated, the DEC must immediately suspend the review and forward all records identified in the Office of the Inspector General (OIG) referral form, Referral of Potential Criminal Conflict of Interest or Ethics Violations, to OMA for assessment pursuant to OIG procedures. In addition, the DEC must simultaneously inform the NEO and the OGC of the referral to OMA, and place of a

copy of the referral packet into the employee's ethics file. Under no circumstances should the DEC interview the employee under review or attempt to gather information from outside the agency. If the OIG declines to pursue the matter, OMA will either conduct a review as an administrative matter or forward it to the IC for action. When forwarded to an IC, the DEC may resume his or her review of the matter, and if necessary as outlined below, refer the matter to the employee's supervisor for consideration of disciplinary action.

Similarly, supervisors who receive information regarding possible criminal conduct must immediately refer the matter to their IC DEC for review. Examples of criminal non-compliance include, but are not limited to:

- Participation in a particular matter that has a direct and predictable effect on an employee's personal or imputed financial interest;
- Acceptance of compensation from a non-government source for official duties; or
- Willful falsification of information on a public financial disclosure report.

Non-Criminal Non-Compliance: The following section explains how DEC's and supervisors shall handle instances of employee non-compliant conduct when criminal investigation is not pursued or is not warranted.

E. Responsibilities

1. **Deputy Ethics Counselor:** The DEC is responsible for ensuring that the employee is counseled regarding the nature of non-compliant conduct and establishing a deadline for compliance. In addition, the DEC will determine whether any corrective action taken by the employee is sufficient to comply with the appropriate statutes and regulations.
2. Generally, upon the first instance of non-compliant conduct, the DEC shall:
 1. inform the employee of the non-compliant conduct in writing;
 2. designate the necessary steps for compliance;
 3. establish a deadline for compliance; and
 4. follow up to determine whether action taken by the employee was satisfactory to meet compliance.

If the employee's actions do not comply with the DEC's instructions for compliance after sufficient opportunity and guidance have been given, the DEC must refer the non-compliant conduct to the employee's supervisor for consideration of disciplinary action (via form NIH-2850 Referral for Non-Compliance with Ethics Requirements).

3. In some instances, an employee's non-compliant conduct may be particularly egregious and warrant an immediate referral to the employee's supervisor for consideration of disciplinary action (via form NIH-2850) regardless of whether this is the employee's first instance of non-compliance. Examples of egregious non-compliant conduct include, but are not limited to:
 1. engaging in expert witness services without prior approval;

2. consulting with industry; or
3. accepting a gift associated with an award from an outside entity without prior approval.
4. Upon a second instance of the same non-compliant conduct and for each time thereafter, or repeated failure to comply with various mandatory requirements, the DEC shall:
 1. inform the employee of the non-compliant conduct in writing;
 2. designate the necessary steps for compliance;
 3. establish a deadline for compliance;
 4. refer to the employee's supervisor the non-compliant conduct for consideration of disciplinary action (via form NIH-2850), along with previous written counsel and/or related documentation; and
 5. document whether employee compliance was attained and whether further follow-up is necessary.

The DEC shall also send a copy of the NIH-2850 to the Office of Human Resources (OHR) contact for the IC, and file the NIH-2850 and related documentation in the employee's ethics file.

Supervisor: It is the responsibility of the supervisor to immediately notify the IC DEC if he or she believes that an employee is or has engaged in non-compliant conduct or receives information of an employee's non-compliant conduct. Additionally, it is the responsibility of the supervisor to take the necessary disciplinary action required to address employee non-compliance once the DEC has confirmed that the behavior is non-compliant.

When the DEC forwards a NIH-2850 with respect to an employee's non-compliant conduct, the supervisor shall consult with the IC OHR Workforce Relations Division to determine and administer appropriate action to address the employee's non-compliant conduct. The supervisor is responsible for ensuring that sufficient disciplinary action is taken to address employee violations. With guidance from the OHR Workforce Relations Division, the supervisor shall determine:

- whether administrative action, such as discipline, is warranted; and
 - if warranted, the severity of the action to be taken.
1. The supervisor shall consider other non-compliant referrals from the DEC, when determining the severity of the discipline.
 2. Discipline, if imposed, should be progressive, consistent with the nature of the offense in light of all relevant facts and circumstances. See the [NIH Table of Penalties](#) for guidance.

F. Annual Report of Non-Compliance Referrals

Each year, the DEC shall report to the NEO the number and types of referrals to supervisors during the previous calendar year, using form NIH-2802, Annual Report of Referrals for Non-

Compliance With Ethics Requirements. The report is due by January 31st each year. The DEC shall attach copies of all completed NIH-2850 forms issued for the period of the report. In addition, the DEC shall submit a copy of the NIH-2802 to OGC, without the attached completed referral forms.

G. Availability of Forms

Both of the forms and instructions are available on the NIH Ethics Program web site, on the [forms page](#) and the [procedures page](#).

H. Additional Information

For additional information regarding compliance with ethics statutes and regulations, contact your IC [Deputy Ethics Counselor](#) or [Ethics Coordinator/Specialist](#), whose names are listed on the NIH Ethics Program web site. Additional information may also be obtained from the NIH Ethics Office (301-402-6628).

See the introductory chapter [NIH Manual Chapter 2400-01](#), Introduction to Government Ethics at the NIH (06/18/08) for information regarding relevant Authorities and References (Section D), Records Retention and Disposal (Section H), and Management Controls (Section I).