

§ 2638.502

term excludes any statute that is contained in title 18 of the United States Code or which imposes a criminal penalty as well as any statute made applicable to a specific agency that mandates or proscribes conduct not otherwise the subject of Governmentwide standards. It excludes any matter covered by sections 101 (k) and (m) of Executive Order 12674 that are within the cognizance of agency Inspectors General, the Office of Special Counsel or the Equal Employment Opportunity Commission.

(2) *Employee* means any officer or employee, including a special Government employee, covered by any of the provisions contained in part 735 of this title.

(3) *Head of an agency*, in the case of an agency that is headed by a board, committee or other group of individuals, refers to the employee's appointing authority.

(4) *Corrective action* means any action necessary to remedy a violation of an ethics provision including, but not limited to, recusal, divestiture, termination of an activity, restitution, or the creation of a qualified blind or diversified trust.

(5) *Disciplinary action* includes the full range of disciplinary actions provided for by Office of Personnel Management regulations and instructions implementing authorities contained in title 5 of the United States Code or provided for in comparable authorities applicable to employees not subject to title 5.

(6) The terms *he*, *his* and *him* include "she," "hers" and "her."

(c) *Violations of criminal statutes.* Nothing contained in this part gives the Director or any agency official authority to make a finding that any criminal statute relating to conflicts of interest is being or has been violated. If facts elicited under these procedures indicate that a criminal violation of any such provision is occurring or has occurred, the suspected violation will be referred for possible prosecution in accordance with 28 U.S.C. 535 and the reporting requirements set forth in §2638.603 of this chapter shall apply. Subsequent to referral, proceedings under this subpart may be initiated or continued at the discretion of the Director, after consultation with

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the appropriate investigatory or prosecutorial authorities.

(d) *National security.* Proceedings under this subpart shall be conducted in accordance with applicable national security requirements.

[55 FR 1667, Jan. 18, 1990; as amended at 55 FR 21846, May 30, 1990]

§ 2638.502 Recommendations and advice.

The Director may make recommendations and provide advice to agencies, designated agency ethics officials and employees for the purpose of ensuring an employee's compliance with applicable ethics provisions. This authority may be used where there is doubt or a dispute regarding the applicability of an ethics provision or where the Director has information indicating that an ethics provision is being improperly interpreted. Recommendations may be made or advice provided on the Director's own initiative or at the Director's discretion in response to a written or oral request. As determined by the Director, the recommendation may be made or the advice given either orally or in writing. In addition, the Director shall afford an employee the opportunity for personal consultation, if practicable, regarding action required to be taken by the employee to achieve compliance with applicable ethics provisions.

§ 2638.503 Agency investigations.

(a) *Recommendation of investigation.* If the Director has reason to believe that an employee is violating or has violated any ethics provision, the Director may recommend to the head of the agency that the agency conduct such investigation as is necessary to determine whether, in fact, a violation is occurring or has occurred and, where warranted, take appropriate disciplinary or corrective action. If the matter already has been investigated or if the facts are fully known to the agency and, in the opinion of the agency head, require no further investigation, the head of the agency shall notify the Director of that determination and shall promptly file the agency report required by paragraph (c) of this section.