

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.

(1) If the employee involved is the head of an agency, the recommendation shall be made to the President and the procedures set forth in this section shall serve as guidance only.

(2) Where there is reason to believe that an employee has given preferential treatment or failed to act impartially, this authority will not be used to initiate an investigation in the nature of a review or audit of the agency program in which the employee participated.

(b) *Initiation of investigation.* The head of the agency shall notify the Director when the agency has initiated an investigation. Where it is anticipated that the investigation will not be completed within 60 calendar days, the head of the agency will notify the Director of that fact and provide an explanation reasonably justifying additional time.

(c) *Agency report.* The head of the agency shall file a report with the Director detailing findings of fact and disciplinary and/or corrective actions taken, if any.

(d) *Director's determination.* The Director will make a determination based on the agency investigation and report.

(1) If the Director determines that the agency has conducted an adequate investigation and has taken appro-

appropriate corrective and/or disciplinary action, the Director shall notify the agency that the matter is closed.

(2) If the Director determines that the agency has conducted an adequate investigation and has recommended appropriate corrective and/or disciplinary action, the Director shall notify the agency that the matter will be closed upon notification that such action has been taken.

(3) If the Director determines that the agency has not conducted an adequate investigation, the Director may recommend that the agency undertake further investigative effort.

(4) If the Director determines that the agency has improperly interpreted an ethics provision or improperly applied an ethics provision to the facts of the case, the Director may, in accordance with § 2638.502, provide advice and recommendations necessary to ensure compliance.

(5) If the Director determines that the agency has taken or recommended inappropriate corrective or disciplinary action, the Director may notify the head of the agency of intent to institute proceedings under § 2638.504 or § 2638.505.

(e) *Notice of noncompliance.* If the Director determines that the head of an agency has failed to conduct an adequate investigation within a reasonable period of time, the Director shall notify the President of that determination. A Notice of Noncompliance will not be based upon a determination that the agency has improperly interpreted or applied an ethics provision or that the agency has taken or recommended inappropriate corrective or disciplinary action.

**§ 2638.504 Director's finding.**

(a) *In general.* If the Director has reason to believe that an employee is violating or has violated an ethics provision, the Director may initiate proceedings under this section for the purpose of making a finding as to whether there is or has been such a violation. In the context of such proceedings, the Office of Government Ethics has the burden of proof to establish that the employee is violating or has violated an ethics provision. The procedures contained in this section do not apply to