

**NATIONAL INSTITUTES OF HEALTH  
NIH Ethics Program**

**Procedure for Managing Employee Non-Compliance with Ethics Requirements  
(Referring Non-Compliant Employees via form NIH-2850)**

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The conflict of interest program, laws, and regulations are designed to foster the efficient and honest operation of the Federal government. The goal of the NIH Ethics Program is to help employees avoid conflicts of interest, both real and apparent. To accomplish this, employees must comply with various requirements, many of which are detailed in regulations and statutes.

The purpose of this procedure is to provide detailed instructions for referring a non-compliant employee to his/her supervisor for possible disciplinary action when the employee does not complete required actions, despite efforts by the Ethics Office to obtain compliance. Due to the seriousness of the matter, Deputy Ethics Counselors (DECs) may refer an employee to the supervisor for possible disciplinary action. Referral is accomplished using form NIH-2850 Referral for Non-Compliance with Ethics Requirements. Use only the most current version, available on the NIH Ethics Program web site, on the forms page:

<http://ethics.od.nih.gov/forms.htm#refer>

See NIH Manual Chapter 2400-08, Managing Employee Non-Compliance with Government Ethics Requirements, available on the [NIH Manual Chapter web site](#) and on the NIH Ethics Program web site, on the [policies page](#).

### **IC ETHICS OFFICE/DEPUTY ETHICS COUNSELOR**

If the DEC's preliminary review of the relevant facts gives him or her reasonable cause to believe that a criminal statute has been violated, the DEC must immediately suspend the review and forward all records identified in the OIG referral form (*Referral of Potential Criminal Conflict of Interest or Ethics Violations*) to the NIH Office of Management Assessment (OMA). Contact OMA for assistance. Non-criminal behavior which does not meet ethics requirements is handled as follows.

1. No later than 5 business days after a determination is made by an IC Ethics Office (ICEO) that an employee is non-compliant, the IC Deputy Ethics Counselor (DEC) or designee shall initiate action using form NIH-2850 Referral for Non-Compliance with Ethics Requirements. Complete Part I.
2. EMIS data entry: Document the referral in EMIS form NIH-2850. See EMIS data entry instructions on the EMIS Help Page as needed. <http://ethics.od.nih.gov/EMIS2/EMIS2-Help.htm>
3. Retain a copy of the form NIH-2850 in your 'Pending' file, and send copies to the Executive Officer and the Office of Human Resources (OHR), Director of the Workforce Relations Office, as noted on the form. Forward the original to the employee's supervisor.

No specific action is required of the Executive Officer or OHR staff. The supervisor will contact them as needed.

### **SUPERVISOR**

Supervisors may, at any time, initiate action for non-compliant behavior. The supervisor may contact the DEC or ethics specialist for assistance in understanding what is required rather than waiting for the DEC to initiate the action. If the DEC initiates action via form NIH-2850, the supervisor will proceed as follows.

1. Review the form NIH-2850 and discuss the non-compliant behavior with the employee. Set a deadline for the employee to comply with the requirement (i.e., give a direct order). For example, give the employee 48 hours to comply, if official travel or other more pressing official matters would not be negatively affected.
2. If the employee does not comply with the direct order, consult with IC management and the Office of Human Resources (OHR) Workforce Relations Office as needed to initiate appropriate discipline. The merits of each individual case will be examined to determine appropriate discipline for failure to follow instructions. The OHR will assist in ensuring consistency across the ICs, using the Table of Penalties as a guide. It is expected that this would be accomplished in a fairly short time frame.
3. Complete Part II of form NIH-2850, sign, and return the original form to the IC DEC in the IC Ethics Office noted in Part I.

### **IC ETHICS OFFICE/DEPUTY ETHICS COUNSELOR**

1. Enter "Date Received" in Part III.
2. Review the action(s) noted by the supervisor.
3. Complete Part III of the NIH-2850 by marking the box appropriate to this action. If additional action is needed, discuss the requirement with the employee's supervisor, IC management, and/or OHR staff as needed. Document the discussion in Part III. For example, if the employee submitted inadequate information, the supervisor may need to discuss the additional needs with the employee. Document that on the form. It may, at times, be necessary to initiate another referral form if sufficient information is not provided, or compliance does not meet regulatory or statutory requirements.
4. Sign and date.
5. Scan the final form and name it as follows: LastnameInitials-2850-referral-date.pdf  
Example: SmithPJ-2850-05-20-08.pdf
6. EMIS data entry: Enter dates into EMIS (date received, DEC review date) and attached the scanned document (from step 5 above).
7. Make copies of the completed form and distribute as noted on the bottom of the form (employee, IC Executive Officer, Employee Performance file in OHR). Make an extra copy and keep it for submission of your IC's annual report of referrals due in January.
8. File the original in the employee's ethics file.

**Note:** An annual report of referrals is required each January. Accurate data entry in EMIS will permit a 'final product' report to be produced by EMIS.

### **ADDITIONAL INFORMATION**

Questions may be directed to the NIH Ethics Office specialist for your IC (301-402-6628), or to the web documents mentioned above.