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employee neither exercise control nor has the ability to exercise control over the financial interests held in the plan; or

(v) The ownership of a financial interest by an employee's spouse or minor child where the spouse or minor child obtained the interest through:

(A) A gift from someone other than the employee or a member of the employee's household;

(B) Inheritance;

(C) Acquisition prior to the employee's becoming a USGS employee;

(D) Acquisition prior to marriage to a USGS employee; or

(E) A compensation package in connection with the employment of the spouse or minor child.

(4) *Divestiture.* The Director of the U.S. Geological Survey may require an employee to divest an interest the employee is otherwise authorized to retain under an exception listed in paragraph (b)(3) of this section, based on a determination of substantial conflict under § 2635.403(b) of this title.

(5) *Waivers.* The Director of the U.S. Geological Survey may grant a written waiver from the prohibition contained in paragraph (b)(1) of this section, based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law, and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which Department programs are administered. A waiver under this paragraph may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification. Notwithstanding the granting of any waiver, an employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

(6) *Pre-existing interests.* A spouse or minor child of an employee may retain a financial interest otherwise prohibited by paragraph (b)(1) of this section which was permitted under criteria and procedures in effect before November 2, 1996, unless the Director of the U.S. Geological Survey determines in writing that such retention is inconsistent

with the standards for waivers in paragraph (b)(5) of this section.

[62 FR 53718, Oct. 16, 1997; 63 FR 18501, Apr. 15, 1998]

§ 3501.105 **Outside employment and activities.**

(a) *Prohibited outside employment and activities.* (1) Under 43 U.S.C. 31(a), employees of the U.S. Geological Survey shall execute no surveys or examinations for private parties or corporations.

(2) Employees in the Bureau of Land Management may not engage in outside employment as real estate agents and realty specialists. Such employees are not required to cancel a real estate license, but may maintain the license on an inactive basis.

(3) Employees in the Office of the Assistant Secretary—Indian Affairs, or in the Bureau of Indian Affairs (BIA), may not hold a position on a tribal election board or on a tribal school board which oversees BIA schools.

NOTE TO PARAGRAPH (a)(3): Except for membership on a tribal election board and a tribal school board which oversees BIA schools, an eligible person employed in the Office of the Assistant Secretary—Indian Affairs or in the BIA may become a candidate for office in his local tribe or may be appointed as a representative of his local tribe if prior approval is obtained from the Deputy Assistant Secretary—Indian Affairs pursuant to paragraph (b) of this section.

(b) *Prior approval of outside employment—(1) Prior approval requirement.* (i) An employee of the Department, other than an employee of the U.S. Geological Survey or a special Government employee, shall obtain written approval from his ethics counselor or other agency designee before engaging in outside employment with a prohibited source.

(ii)(A) An employee of the U.S. Geological Survey (USGS), other than a special Government employee, shall obtain written approval from the USGS deputy ethics counselor before engaging in any outside employment.

(B) The USGS may issue instructions exempting categories of employment from the prior approval requirement in paragraph (b)(1)(ii)(A) of this section, based on a determination that the employment within those categories

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would generally be approved and are not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(2) *Form of request for approval.*

(i) A request for prior approval of outside employment shall include, at a minimum, the following:

(A) The employee's name, occupational title, office address, and office telephone number;

(B) A brief description of the employee's official duties;

(C) The nature of the outside employment, including a full description of the specific duties or services to be performed;

(D) The name and address of the prospective outside employer; and

(E) A statement that the employee currently has no official duties involving a matter that affects the outside employer and will disqualify himself from future participation in matters that could directly affect the outside employer.

(ii) Upon a significant change in the nature of the outside employment or in the employee's official position, the employee shall submit a revised request for approval.

(3) *Standard for approval.* Approval shall be granted unless a determination is made that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(4) *Definitions.* As used in this section:

(i) *Employment* means any form of non-Federal business relationship involving the provision of personal services by the employee, with or without compensation. It includes but is not limited to personal services as an officer, director, employee, agent, attor-

ney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a non-profit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves the provision of professional services or advice for compensation other than reimbursement for actual expenses.

(ii) *Prohibited source* has the meaning in 5 CFR 2635.203(d), as supplemented by § 3501.102, and includes any person who:

(A) Is seeking official action by the Department or, in the case of an employee of one of the separate agency components designated in § 3501.102(a), by that component;

(B) Does business or seeks to do business with the Department, or in the case of an employee of one of the separate agency components designated in § 3501.102(a), with that component;

(C) Conducts activities regulated by the Department or, in the case of an employee of one of the separate agency components designated in § 3501.102(a), by that component;

(D) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(E) Is an organization a majority of whose members are described in paragraphs (b)(4)(ii) (A) through (D) of this section.

[62 FR 53718, Oct. 16, 1997, as amended at 63 FR 34259, June 24, 1998]