**Seeking Employment and Post-Government Employment Ethics Restrictions**

This summary does not address every aspect of every restriction regarding seeking employment or post-Government employment. The restrictions are based on several criminal ethics statutes (18 U.S. Code §§ 207 and 208), the Procurement Integrity Act, 41 U.S.C. § 423, ethics regulations (5 C.F.R. 2635, 2637 and 2641), and Survey Manual chapters.

If you have questions or would like to seek personal advice about seeking employment or post-Government employment, please contact the Ethics Office, Ken Belongia, kbelongia@usgs.gov, 703-648-7422 or Nancy Baumgartner, nbaumgartner@usgs.gov, 703-648-7474. The USGS Ethics Office also provides post-Government employment advice to personnel who are no longer working at USGS. Important caveat: in accordance with 5 C.F.R. 2641.105(d), a current or former employee who discloses information to an agency ethics official, to a Government attorney, or to an employee of the Office of Government Ethics does not have any attorney-client privilege with respect to such communications.

**Seeking Employment**

18 U.S.C. § 208 (the “conflict of interest” statute) prohibits Federal employees from taking any official action with regard to any entities (i.e., companies, corporations, professional societies, non-profit organizations, colleges or universities) with whom they are seeking employment. "Official action" includes providing advice and making recommendations regarding the entity with whom the employee is seeking employment.

“Seeking employment" is not limited to discussions of specific terms and conditions of employment in a specific position. It includes communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible post-Government employment. You are “seeking employment” until either you or your prospective employer rejects the possibility of employment. Any response to a prospective employer that defers discussions until a future time (e.g., “when I’m ready to retire”) does not terminate employment discussions.

If you are seeking employment with an entity, you must recuse (or disqualify) yourself from taking any official action with regard to that entity. An effective way of accomplishing recusal is via a written memo to your supervisor (with a copy to the USGS Ethics Office).

United States Department of the Interior
U.S. GEOLOGICAL SURVEY
**[Insert date]**
MEMORANDUM

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [**Insert name of supervisor**]

From: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [**Insert employee name, title and office**]
(**and sign the memorandum here when completed**)

Subject: Notice of Recusal by [**Insert name of person issuing the recusal**]

This is to notify you that I have a potential financial interest in the following companies or organizations with whom I intend to seek employment: [**Insert the name of the companies or organizations**].

Therefore, pursuant to Title 18 U.S.C. § 208 and the Standards of Ethical Conduct for Conduct of Employees of the Executive Branch, Title 5 Code of Federal Regulations (C.F.R.) 2635.402 (c), 502(e) and 604, I hereby recuse myself from participation in any official matter that will have a direct and predictable effect on the financial interests in the above listed companies or organizations, or matters in which they are a party or represent a party. This means that I cannot act directly or through others in deciding, approving or disapproving such official matters; nor may I recommend, investigate, advise, or otherwise contribute to or influence such official matters.

Accordingly, any official matter that will conflict with my interest in [**insert the name of the companies or organization here, or reference the companies or organizations listed above**] must be handled without my knowledge or participation.

Distribution to:
**Colleagues, subordinates and the USGS Ethics Office**

[Keep a copy for your own records.]

**Procurement Integrity Act, 41 U.S.C. § 423**

Personnel subject to the Procurement Integrity Act have a duty to report certain employment contacts. If you are participating in a procurement with a value of over $100,000 and you contact, or are contacted by, a bidder or offeror in that procurement regarding possible employment, you must promptly report the contact in writing to your supervisor and to the Ethics Office AND you must either unequivocally reject the possibility of post-Government employment, or recuse yourself from further participation in the procurement.

If you are serving in one of seven specified positions (procuring contracting officer, source selection authority, member of source selection evaluation board, chief of a financial or technical evaluation team, program manager, deputy program manager, or administrative contracting officer) or make one of seven specified types of decisions (award a contract, award a subcontract, award a modification of a contract or subcontract, award a task order or delivery order, establish overhead or other rates applicable to a contract or contracts, approve issuance of a contract payment or payments, or pay/settle a claim), on a contract over $10 million, you may not accept compensation (as an employee, consultant, officer, or director) from the contractor for one year after you retire. For additional information about the Procurement Integrity Act, please contact the Office of Acquisition and Grants.

**Post-Government Employment**

After you leave Government service, there are several restrictions on your post-Government employment activities.

**Lifetime representation ban**: 18 U.S.C. § 207(a)(1), 5 C.F.R. 2641.201 There is a permanent restriction on any former employee's representations to United States concerning any particular matter in which the employee participated personally and substantially. If you participate personally and substantially in a particular government matter involving specific parties, then you may not, at any time after leaving the government, communicate with the intent to influence on behalf of any entity to any Federal department, agency or court (any Federal agency, not just your bureau or DOI) regarding that same particular matter. Some examples of government “matters” are grants, cooperative agreements and contracts.

**2-year representation ban**: 18 U.S.C. § 207(a)(2), 5 C.F.R. 2641.202 There is a two year restriction on any former employee's representations to United States concerning any particular matter for which the employee had official responsibility. If you have a particular government matter under your official responsibility during your last year of government service, you may not, for two years after leaving government service, communicate with the intent to influence on behalf of any entity to any Federal department, agency or court (or to any Federal employee, not just personnel at USGS or DOI) regarding that same particular matter.

**“Behind-the-scenes”** You may work “behind the scenes” on matters subject to representation bans only if it does not involve a “communication to” or an “appearance before” an employee of the United States. Even “mere physical presence” at a meeting may be considered a communication with the intent to influence under some circumstances. Please refer to the numerous examples at 5 C.F.R. 2641.201 and 202 at http://ecfr.gpoaccess.gov or contact an Ethics Counselor for additional guidance.

**“Intent to influence”** A communication or appearance is made with the intent to influence when made for the purpose of: (i) Seeking a Government ruling, benefit, approval, or other discretionary Government action; or (ii) Affecting Government action in connection with an issue or aspect of a matter which involves an appreciable element of actual or potential dispute or controversy. 5 C.F.R. 2641.201(e)

**Contracting with USGS**

The ability of the USGS to contract with former employees is very limited. The term “former employee” includes business concerns substantially owned or controlled by one or more former USGS employees. According to Survey Manual Chapter 404.5, Acquisition/Assistance Awards to Former USGS Employees, 6/3/08, Section 2, Policy: "Any acquisition or assistance award to a former employee can create the appearance of one or more of the following: that the former employee enjoyed an unfair advantage over potential competitors by virtue of inside knowledge of or contacts within the USGS; that the employee created a business opportunity for him/herself during his/her tenure; that acquisition/assistance instruments are being used to circumvent employment ceilings or to avoid the restrictions on compensation to reemployed annuitants."

If a former employee's separation or retirement date is less than 2 years from the proposed date of contract award, SM Chapter 404.5, Section 4, will apply: “Awards to former employees may not be made unless the requisitioning office’s Associate Director or Regional Director approves the action as the only reasonable alternative means for accomplishing a mission requirement. This authority may be delegated to an official one level below the Associate Director or Regional Director, without further delegation. In support of the determination, the requisitioning office must: (1) Identify the employee, separation status, and date of separation; (2) Identify any known previous awards to the former employee; (3) Certify that the former employee did not participate in the development of the requirement and that no commitment, promise, or other agreement on the matter has been made with the former employee; (4) Demonstrate that reasonable alternatives, including the use of current employees, have been explored and found impracticable; (5) Describe additional steps that will be taken to avoid a recurring need for the former employee’s services; and (6) Demonstrate how the mission of the USGS will be impaired without the use of the former employee. Such determinations will be approved only where the demonstrated need is sufficient to overcome the appearance of favoritism inherent in awards to former employees. The original signed approval will be provided to the servicing acquisition office along with the Form DI-1, Requisition.” This restriction does not apply to student or temporary appointment personnel or if the requirement is for gage reading or instrument monitoring in a remote location. The requisitioning office will consult the Bureau Ethics Office when a former employee’s involvement in the acquisition or assistance award may result in a conflict of interest or other statutory violation.

**Additional laws that apply to “senior” and “very senior” employees**

You are a “senior” employee if your pay is equal to or greater than 86.5 % of the base pay for level II of the Executive Schedule. You are a “very senior employee” if your pay is Level I of the Executive Schedule.

For one year after leaving senior service, no former senior employee may make, with the intent to influence, any communication to or appearance before the department or agency in which he or she served in the one year period prior to termination from senior service. 18 U.S.C. § 207(c).

For two years after service in a very senior position, former Executive Schedule Level I employees are prohibited from making, with the intent to influence, any communication to or appearance before: (1) Any individual appointed to an Executive Level position; or (2) Any employee of a department or agency in which the former very senior employee served during his or her last year of Government service. 18 U.S.C. § 207(d)

There are certain limited exceptions to these “cooling off” periods. Please contact the Ethics Office for information. 5 C.F.R. 2635.204 and 205

For one year after leaving Government service, a former senior or very senior employee may not knowingly aid, advise, or represent a foreign entity, with the intent to influence the official actions of any employee of any U.S. agency or department. 18 U.S.C. § 207(f)

“Senior” and “very senior” employees are advised to contact the Ethics Office for personalized post-Government employment information and guidance.