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child of an employee from having a financial interest in a pension administered by, or which invests in, a company or other person engaged in mining activities subject to the Mine Safety and Health Act.

*Example:* A mine inspector who was a former employee of mining company X could continue to participate in mine company X's pension plan without violating this section. However, he would have to disclose the interest on his financial disclosure report. Additionally, the inspector should not inspect or otherwise take official action on a matter affecting mine company X without checking with his ethics advisor to ensure that performance of his official duties would not violate the conflict of interest statute (18 U.S.C. 208) or any other ethics provisions.

(c) *Waiver.* (1) The Assistant Secretary of labor for Mine Safety and Health or the Assistant Secretary's designee may grant an employee a written waiver from the prohibitions contained in paragraph (a) 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 to ensure confidence in the impartiality and objectivity with which Mine Safety and Health Administration programs are administered.

(2) The Assistant Secretary or the designee shall grant a waiver from the prohibitions in paragraph (a) of this

section regarding spouses and minor children unless the Assistant Secretary or the designee determines that the covered relationship or interest is likely to be inconsistent with 5 CFR part 2635 or is otherwise prohibited by law.

(3) A waiver under this section may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification. A waiver may be withdrawn if it is later determined that such waiver does not meet the requirements for the granting of waivers under this paragraph. Notwithstanding the grant of any waiver, a covered employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

(4) Factors which may be considered in connection with the granting or denial of waivers include the nature and extent of the financial interest, and the official position and duties of the employee.

(d) *Pre-existing interests.* Notwithstanding paragraph (a) of this section, an employee of the Mine Safety and Health Administration, and a spouse or minor child of such an employee, may retain financial interests otherwise prohibited by paragraph (a) of this section which were approved in writing under procedures in effect before the effective date of this section, unless the approval is withdrawn, subject to the standards applicable to the withdrawal of waivers under paragraph (c) of this section.

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**PART 5301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL SCIENCE FOUNDATION**

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AUTHORITY: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 1870(a); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105, 2635.502, 2635.802(a), 2635.803.

SOURCE: 61 FR 59818, Nov. 25, 1996, unless otherwise noted.

**§ 5301.101 General.**

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the National Science Foundation (NSF), including Members of the National Science Board. They supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) *Definitions.* For purposes of this part, unless a provision plainly indicates otherwise:

(1) *Award* means any grant, contract, cooperative agreement, loan, or other arrangement made by the Government.

(2) *Employee* has the meaning set forth in 5 CFR 2635.102(h), except that, for purposes of this part, it shall not include a special Government employee.

(3) *Institution* means any university, college, business firm, research institute, professional society, or other organization. It includes all parts of a university or college, including all institutions in a multi-institution State or city system. It includes any university consortium or joint corporation, but not the individual universities that belong to such a consortium. Those universities shall be considered separate institutions for purposes of this part.

(4) *Proposal* means an application for an award and includes a bid.

**§ 5301.102 Participation in proposals and awards.**

(a) *Participation in proposals and awards.* (1) For the purpose of determining whether an employee or a special Government employee, other than a Member of the National Science Board, should participate as part of his official duties in a proposal or award, the affiliations and relationships listed in paragraph (a)(3) of this section shall be considered additional "covered relationships" for purposes of applying 5 CFR 2635.502. Except as provided in paragraph (a)(2) of this section, they shall be treated as disqualifying to the same extent as the covered relationships listed in 5 CFR 2635.502(b)(1).

(2) Where an affiliation or relationship is listed in paragraph (a)(3) of this section as "automatically disqualifying," an employee shall not participate in a proposal or award in which the institution or other person with whom the employee has a covered relationship is or represents a party unless participation is authorized in accordance with 5 CFR 2635.502(d) by the agency designee, with the concurrence of an ethics counselor in the Office of the General Counsel.

(3) An employee has a covered relationship, within the meaning of 5 CFR 2635.502(b)(1), with:

(i) An institution with which the employee is affiliated through:

(A) Membership on a visiting committee or similar body at the institution. The relationship is automatically disqualifying where the particular department, school, or faculty that the visiting committee or similar body advises originated the proposal or where a proposal from the department, school, or faculty formed the basis for the award;

(B) Current enrollment of the employee or a member of the employee's household as a student;

(C) Receipt and retention of an honorarium or other form of compensation, award, or off-duty travel payment from the institution within the last twelve months. The relationship is automatically disqualifying, unless the payment or award was received before beginning Government service; and

(ii) A person who is an investigator or project director on or who otherwise

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is identified in a proposal as a party to the proposal or award and with whom the employee has:

(A) A family relationship as sibling, parent, spouse, or child. Any such relationship is automatically disqualifying;

(B) Associated, in the past or currently, as thesis advisor or thesis student;

(C) Collaborated on a project, book, article, report, or paper within the last 48 months; or

(D) Co-edited a journal, compendium, or conference proceedings within the last 24 months.

(b) *Reporting involvement of prospective, current, or recent employees.* (1) When an employee who is participating in a proposal or award becomes aware that a prospective, current, or recent NSF employee or current National Science Board member is or is likely to become a member of the research group or project staff under that proposal or award, the employee shall bring that circumstance to the attention of an agency designee. For purposes of this paragraph:

(i) A “recent NSF employee” is any former NSF employee who left the NSF within the year before submission of the proposal at issue or on which the award was based.

(ii) A “prospective NSF employee” is any person being recruited by an NSF official for a specific opening and from whom the official has received an indication of mutual interest. Such a person is a “prospective NSF employee” even though those recruiting have not extended an offer and even though the person might not accept an offer if it were extended.

(2) The agency designee shall review the circumstances to determine what action, if any, should be taken to assure that the proposal or award is administered impartially and otherwise in compliance with applicable laws and regulations, including this part, 5 CFR part 2635, 18 U.S.C. 207 and 208, and 45 CFR part 680.

**§ 5301.103 Outside employment and activities.**

(a) *Prohibited outside employment and activities.* (1) An NSF employee may not receive, directly or indirectly, any sal-

ary, consulting fee, honorarium, or other form of compensation for services, or reimbursement of expenses, from an NSF award.

(2) An NSF employee may not serve as principal investigator or project director under an NSF award.

(3) An NSF employee may not receive, directly or indirectly, any honorarium or any other form of compensation, or reimbursement of expenses from anyone, other than the United States, for participating in an event supported by NSF funds.

(b) *Prior approval of outside employment and activities.* (1) An employee shall obtain written approval from an agency designee before:

(i) Engaging in compensated outside employment with any person or institution (including any for-profit, non-profit, or governmental organization) which does business or may reasonably be expected to do business with the NSF. For these purposes, “employment” means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement for publication of the written product; or

(ii) Serving, with or without compensation, on a visiting committee with any institution that does business or may reasonably be expected to do business with NSF.

(2) In addition to any prior approval required in paragraph (b)(1) of this section, an employee shall obtain prior written approval:

(i) From an ethics counselor in the Office of the General Counsel before participating, with or without compensation, as a policymaking officer of any research or educational institution or any scientific society or professional association; and

(ii) From his Assistant Director or Office head before serving in a personal capacity as an organizer, director, proceedings editor, or session chairperson for a conference, workshop, or similar

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event supported by NSF funds, or before presenting a paper at such an event.

(3) The approvals required by paragraphs (b)(1) and (b)(2) of this section shall be granted only upon a determination by the appropriate NSF official that the outside employment or activity is not expected to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635 and this part.

### § 5301.104 Participation in NSF-supported conferences.

An NSF employee may participate in conferences, workshops, and similar events supported by NSF funds provided that:

(a) Where the employee's participation is undertaken in a personal capacity, his participation does not violate the restrictions on outside employment and activities of § 5301.103(a), and the approval requirements of § 5301.103(b) have been met.

(b) Where the employee's participation is undertaken as part of his official duties as an NSF employee:

(1) The employee shall obtain prior written approval from his Assistant Director or Office head before serving as an organizer, director, proceedings editor, or session chairperson for a conference, workshop, or similar event sponsored by NSF funds, or before presenting a paper at such an event. However, prior approval is not required where the primary purpose of the event is to plan, assess, or publicize NSF programs or needs, or where the subject of the paper or session to be presented focuses on NSF programs or needs.

(2) The approval required by paragraph (b)(1) of this section shall be granted only upon a determination that the importance of the employee's participation outweighs any appearance of use of official position to enhance his personal credentials.

### § 5301.105 Restrictions applicable to Members of the National Science Board.

(a) *Participation in proposals and awards.* (1) For the purpose of determining whether a Member of the National Science Board (Board) should participate as part of his official duties

in a proposal or award coming before the Board or any of its committees, the affiliations and relationships listed in paragraph (a)(3) of this section shall be considered "covered relationships" for purposes of applying 5 CFR 2635.502. Except as provided in paragraph (a)(2) of this section, they shall be treated as disqualifying to the same extent as the covered relationships listed in 5 CFR 2635.502(b)(1).

(2) Where an affiliation or relationship is listed in paragraph (a)(3) of this section as "automatically disqualifying," a Member of the National Science Board shall not participate in a proposal or award in which the institution or other person with whom the Member has a covered relationship is or represents a party, unless participation is authorized in accordance with 5 CFR 2635.502(d) by the Chairman of the National Science Board or by the Designated Agency Ethics Official.

(3) A Member of the National Science Board has a covered relationship, within the meaning of 5 CFR 2635.502(b)(1), with:

(i) An institution or other person with which the Member is affiliated through:

(A) Membership on a visiting committee or similar body at the institution. The relationship is automatically disqualifying where the particular department, school, or faculty that the visiting committee or similar body advises originated the proposal or where a proposal from the department, school, or faculty formed the basis for the award; or

(B) Current enrollment of the Member or a member of his household as a student; and

(ii) A person who is an investigator or project director or who is otherwise identified in a proposal as a party to the proposal or award and with whom the Member has a family relationship as sibling, parent, spouse, or child. Any such relationship is automatically disqualifying.

(b) *Outside employment and activities.* (1) A Member of the National Science Board shall not represent himself, herself, or any other person in negotiations or other dealings with an NSF official on any proposal, award, or other

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particular matter, as defined in 5 CFR 2635.402(b)(3).

(2) A Member of the National Science Board may not receive compensation from any award made while serving on the Board. However, unless prohibited by law, an award may be charged, and a Member may be reimbursed, for actual expenses incurred by the Member

in doing work supported by the award. If a Member was an investigator or consultant under an award before appointment to the Board, the award may be charged and the Member may continue to receive compensation to the extent established before the Member's nomination.