

GEOSCIENCES AND ENGINEERING DIVISION
ADMINISTRATIVE PROCEDURE

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Title

EVALUATION OF POTENTIAL CONFLICT OF INTEREST

EFFECTIVITY

Revision 8 of this procedure became effective on 08/25/2005. This procedure consists of the pages and changes listed below.

<u>Page No.</u>	<u>Change</u>	<u>Date Effective</u>
All	0	08/25/2005

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Date

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EVALUATION OF POTENTIAL CONFLICT OF INTEREST**1. INTRODUCTION**

A potential for conflict of interest (COI) exists when an individual or organization has past, present, or planned future interests related to the work to be performed for the Geosciences and Engineering Division (Division) that may (i) diminish his or her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product; (ii) result in an unfair competitive advantage; or (iii) otherwise result in the Division not being able to support future client activities because of a COI.

Evaluation of the potential COI and the avoidance of COI are business imperatives of Southwest Research Institute® (SwRI®). Section 1.1.4, Employee Standards of Conduct, of the SwRI Operating Policies and Procedures manual establishes the basic policy on COI. It highlights the importance of maintaining a reputation for objectivity, and establishes an obligation for each employee to reveal any existing or potential COI as soon as it is discovered. SwRI has prepared an Employee Standards of Conduct manual, which each employee is required to read and acknowledge in writing. Consistent with SwRI policy, the Division vision statement includes a pledge to deliver products and services that are free from COI. This procedure implements the SwRI and Division policies regarding COI.

The need to avoid COI was a principal reason the U.S. Nuclear Regulatory Commission (NRC) established the Center for Nuclear Waste Regulatory Analyses (CNWRA) (Contract No. NRC-02-02-012, Section C.1.1.2 and other contracts). Following its reorganization to create a division comprising the CNWRA and the Department of Earth, Material, and Planetary Sciences (DEMPS), the principles, practices, and procedures established to meet NRC requirements were extended to all work conducted by and for the Division.

This procedure applies to individuals and organizations conducting work on behalf of the Division. Past, present, and planned future work are evaluated in determining whether there is a potential COI. As a matter of administrative efficiency, this procedure also addresses other factors affecting whether individuals and organizations are qualified to work on behalf of the Division. In particular, it addresses prior employment, immigration status, export control restrictions, access to sensitive information, and security clearance requirements.

2. PURPOSE

The purpose of this procedure is to establish the methods for evaluating the potential for COI among (i) Division employees; (ii) other SwRI personnel, subcontractors, and consultants performing work for the Division; and (iii) suppliers of services to the Division.

3. DEFINITIONS

Access to Information—Provision of certain information to individuals or organizations taking into consideration any security concern.

Employed—A relationship exists whereby payment or similar consideration is received for services rendered. For purposes of this procedure, the term encompasses consultant and subcontractor relationships, and suppliers of personal services, as well as traditional employer-employee arrangements. The ultimate or original source of the funding must be known to accurately evaluate the potential COI.

Individual COI—A relationship exists whereby an individual has past, present, or planned future interests related to the work to be performed for the Division that may (i) diminish his or her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product; (ii) result in an unfair competitive advantage; or (iii) otherwise result in the Division not being able to support future client activities because of a COI. The ultimate or original source of funding must be determined to evaluate the potential COI. If the original source of funds is a conflicted organization, the potential COI remains, regardless of how many tiers of subcontracting may separate the individual from that source.

NRC Licensee—An individual or organization subject to licensing or certification under NRC regulatory authority is considered an NRC licensee. NRC licensing or certification activities of concern in this procedure include any conducted under Title 10 of the Code of Federal Regulations, or as may be specifically directed by statute.

Organizational COI—A relationship exists whereby an organization—whether it is an independent entity or an affiliate unit of another organization—has past, present, or planned future interests related to the work to be performed for the Division that may (i) diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product; (ii) result in its being given an unfair competitive advantage; or (iii) otherwise result in the Division not being able to support future client activities because of a COI. The ultimate or original source of funding must be determined to evaluate the potential COI. If the original source of funds is a conflicted organization, the potential COI remains, regardless of how many tiers of subcontracting may separate the organization from that source.

Party to the Nuclear Waste Policy Act (NWPA)—The U.S. Department of Energy (DOE), NRC, affected states and tribes, and other agencies and organizations that the NWPA acknowledges have a direct role in the licensing proceeding for a high-level waste repository and/or an interim storage facility authorized under the NWPA are considered parties to the NWPA. Although party standing is defined in 10 CFR Part 2 with respect to the licensing proceeding, COI restrictions on work for parties apply to all activities funded under the NWPA, not just the licensing proceeding.

Potential COI—A factual situation exists that indicates that a COI may arise. The term “potential conflict of interest” is used to signify those situations that merit investigation prior to employment

or assignment of an individual or award of a contract to an organization in order to ascertain whether employment or contract award would give rise to an actual conflict.

Work—Any technical assistance, technical review, or research activity or management of such activity on behalf of a client. Internally funded research and development activities are not considered to be “work” for purposes of this procedure. Past, present, and planned future work are subject to COI evaluation.

4. RESPONSIBILITIES

4.1 The Division Vice President has overall responsibility for implementing this procedure.

4.2 The Source Evaluation Committee (SEC) is responsible for evaluating individuals and organizations for the potential COI. The SEC consists of the Division Vice President, CNWRA President, Director of DEMPS, Director of Administration, Director of Quality Assurance, responsible Assistant Director, and responsible manager. The Director of Quality Assurance also acts as Secretary to the SEC.

4.3 The cognizant manager is responsible for obtaining and analyzing COI information and for submitting the information for SEC review.

5. CRITERIA

NRC requires specific matters to be considered in evaluating the potential COI. These comprise the criteria presented in Section 5.A of this procedure. The criteria in Section 5.A must be used to evaluate the potential COI of all individuals and organizations conducting work by or for the Division that is funded by the NRC. More general criteria applicable to work funded by organizations other than the NRC are presented in Section 5.B of this procedure. The criteria in Section 5.B must be used to evaluate the potential COI of all individuals and organizations conducting work by or for the Division that is funded by any organization other than the NRC.

5.A Criteria for Evaluation of Individuals and Organizations Conducting Work Funded by NRC

5.1 Past, present, or planned future work for an entity under the regulatory authority of NRC, including as consultants and subcontractors, creates the potential COI. Examples include parties to the NWPA other than NRC and NRC licensees. Generally, concurrent work for a party under the NWPA, other than NRC; an NRC licensee; or other potentially conflicted organization is not permitted.

5.2 Organizations or employees or agents acting in their behalf shall not provide technical or policy reviews or advice on work they directly performed, for which they had management responsibility, or which would result in their being given an unfair competitive advantage.

5.3 Individuals shall not provide technical or policy reviews or advice on work they directly performed or for which they had management responsibility.

5.4 Individuals or organizations shall not develop or directly support development of technical or policy positions for NRC that are based principally or substantially on work they directly performed or for which they had management responsibility while employed (including as consultants and subcontractors) by a party under the NWPA, other than NRC; an NRC licensee; or other potentially conflicted organization.

5.5 Individuals or organizations shall not participate in any Division activity funded by the NRC that is directly related to issues, positions, or decisions for which they have taken a position of advocacy (including as consultants and subcontractors) for a party under the NWPA, other than NRC; an NRC licensee; or other potentially conflicted organization.

5.6 Individuals or organizations may conduct limited original research in technical areas where, in the past, they directly performed work or for which they had management responsibility while employed (including as consultants and subcontractors) by a party under the NWPA, other than NRC; an NRC licensee; or other potentially conflicted organization provided such previous research was not specific to any site, design, or facility addressed by contracts between SwRI and NRC for work performed by the Division.

5.7 Individuals or organizations may perform analyses and evaluations using methodologies they directly developed or had management responsibility for developing while employed (including as consultants and subcontractors) by a party under the NWPA, other than NRC; an NRC licensee; or other potentially conflicted organization provided that the methodology has been independently reviewed and approved by NRC or has been incorporated in a consensus standard.

5.8 Individuals or organizations may develop or support development of technical criteria that are based principally or substantially on work they directly performed or for which they had management responsibility while employed (including as consultants and subcontractors) by a party under the NWPA, other than NRC; an NRC licensee; or other potentially conflicted organization provided that the supporting work has been independently reviewed and approved by NRC.

5.9 Former NRC or other U.S. government agency employees may perform work, provide aid, counsel, or assist in representing the Division in any proceeding (with regard to work they supervised or directly performed as an employee of NRC or other U.S. government agency), only after their participation has been reviewed and approved by the Office of General Counsel of NRC or other U.S. government agency, under 18 U.S.C. 207.

Former NRC employees shall be constrained by the specific prohibitions in place at the time they are considered for employment or a consultancy.

5.10 Individuals or organizations may be utilized in other NRC-funded activities of the Division outside the NWPA that the Division management deems appropriate, with concurrence by the NRC CNWRA Program Manager.

5.B Criteria for Evaluation of Individuals and Organizations Conducting Work Funded by Organizations Other Than NRC

5.11 Individuals or organizations shall not provide reviews or advice on work they directly performed, for which they had management responsibility, or which would result in their being given an unfair competitive advantage.

5.12 Individuals or organizations shall not participate in any Division activity funded by NRC that is directly related to issues, positions, or decisions for which they have taken a position of advocacy (including as consultants and subcontractors) for a regulated entity or other potentially conflicted organization.

5.13 Individuals or organizations shall not work concurrently for more than one client on projects with conflicting technical, policy, or other objectives.

5.14 Individuals or organizations shall not work on projects where personal, outside business, or other interest could affect their objectivity with respect to that project.

5.15 If an individual or organization determines that they have conducted or are conducting work that introduces a potential COI with assignments within the Division, they are required to immediately report same to the Division. In general, further work for the Division will be immediately terminated and further work in the area of COI will not resume unless a client waiver is obtained consistent with Section 6C of this procedure.

6. PROCEDURE

The following procedure (summarized in the flowcharts in Figures 1 and 2) shall be used by the SEC to evaluate potential COI, mitigate the effects of such potential COI, and seek waivers from the requirements of this procedure. This procedure will be applied before any individual or organization first engages in Division activities, and before any significantly different assignment is considered that may introduce a potential for COI. Individuals or organizations other than Division staff shall be reevaluated annually.

The responsible manager will determine whether any Division staff member, prospective employee, consultant, subcontractor staff member, or existing SwRI employee from another division has the necessary documentation, approvals, and authorizations to access information necessary to perform a specific scope of work for the Division. Access to information is dependent on citizenship, immigration status, export control, security clearance, and other criteria (as summarized in the flowchart in Figure 3).

Former NRC employees may be used only to the extent they comply with Section 5.9.

6.A. EVALUATION OF INDIVIDUALS ORGANIZATIONS NOT SUBJECT TO FULL REVIEW

Certain employee classifications and job functions pose no potential COI. This section (i) defines the characteristics of job functions that eliminate the potential COI and (ii) lists applicable employee classifications and job functions that do not require the complete evaluation described under Section 6B of this procedure. The manager shall prepare a memorandum to the SEC supporting this determination along with the other required documentation identified in Table 1.

6.1 Individuals or organizations whose job functions are characterized by the following factors do not require the complete evaluation described under Section 6B of this procedure.

- The individual or organization does not provide technical assistance, research, advice, hearing support, positions, or other types of assistance. For example, the contributions of the individual or organization fall outside of those defined in Section C.1.1.3, Commitments, of Contract NRC-02-02-012.
- The individual or organization does not contribute to the technical substance of work products delivered under contract to the client.
- The individual or organization does not provide technical analyses, interpretations, or judgments that could create a potential for bias.
- The activities of the individual or organization are conducted at the direction of technical staff and managers who prescribe, control, and monitor all aspects of the work performed through direct oversight, procedures, instructions, drawings, or specifications. Examples include data collection, measurements, production runs of computer codes, sample preparation, and movement and positioning of equipment.
- To ensure there is no unacceptable potential COI, the technical staff and managers responsible for directing the individual or organization—including but not limited to prescribing measurement techniques, selecting standard methods, developing any nonstandard methods, and specifying calibration standards and periods that could affect results obtained—will normally provide any testimony required to support hearings or other activities on behalf of the client.

6.2 Individuals and organizations in the following SwRI classifications perform job functions that are characterized by the factors enumerated in Section 6.1 and, therefore, are not subject to full COI review under Section 6B of this procedure. If individuals in these classifications perform job functions other than those enumerated in Section 6.1 (e.g., a technician develops novel procedures that control the substantive results of the work), the potential COI must be evaluated in accordance with Section 6B of this procedure.

- Administrative staff (e.g., those classified as AS-1 through AS-7 of the SwRI Career Ladders and Job Guidelines, or equivalent), including but not limited to administrative

assistants, administrative coordinators, clerks, data entry operators, expeditors, financial analysts, librarians, procurement specialists, publication assistants, and secretaries.

- Specialist staff (e.g., those classified as SP-1 through SP-5, or equivalent), including but not limited to attorneys, editors, legal assistants, nurses, and technical specialists. Attorneys tasked to work directly on Division projects and programs (i.e., other than in an overhead capability on behalf of SwRI) are subject to COI review under Section 6B of this procedure.
- Technician staff (e.g., those classified as TS-1 through TS-6 and certain PL1, or equivalent), including but not limited to computer administrators, operators and technicians; drafters; fabricators; instrument calibrators, operators, and technicians (e.g., of optical microscopes, scanning electron microscopes, x-ray diffraction systems, and atomic force microscopes); machinists; mechanics; photographers; chemical, electrical, electronics, and mechanical technicians; and welders. Quality assurance, senior designer, and senior programmer staff in the TS and PL classifications generally are subject to COI review under Section 6B of this procedure.
- Supervisory staff, regardless of classification, who assign individuals to projects, maintain utilization, oversee maintenance of facilities and equipment, or conduct administrative activities.

6.B. EVALUATION OF INDIVIDUALS AND ORGANIZATIONS SUBJECT TO FULL REVIEW

The SEC shall perform the evaluations in accordance with the following steps for all individuals and organizations not exempt under 6A. This section applies to SwRI employees, as well as consultants, subcontractors, and suppliers of personal services. The manager shall prepare a COI assessment memorandum to the SEC, with the other documentation required by Table 1 attached.

6.3 A manager will identify a required area of expertise and a prospective individual or organization to provide the expertise. This typically will occur when developing or modifying the staffing section of the Division Management Plan, Operations Plans, a proposal, or other planning document. It also may occur as a result of a special request from a client or in response to a resource reallocation meeting.

6.4 The manager shall prepare and submit to the SEC an evaluation portfolio containing the following information. Items a-d are primarily information COI review; items e-g address other business considerations evaluated by the SEC; item f may also support any waiver request under Section 6C.

- a. Resumés and complete detailed work history of the prospective individual or organization. The work history must include clients, sources of funding, scopes of work, and inclusive dates (month and year) of performance for the current and preceding three years, and planned clients for the next 2 years.

b. Potential consultants and subcontractors shall provide a signed letter from the individual or organization (i) attesting to being currently free from COI, (ii) stating the intent to remain free from COI, and (iii) committing to notify the Division and obtain approval before agreeing to undertake other work that may create a potential COI. Potential Division employees shall provide a signed letter (i) attesting to being currently free from COI, (ii) stating the intent to remain free from COI, and (iii) committing to notify the Division and obtain approval before agreeing to undertake other work—during the period between the individual submitting an application and the Division making a hiring decision, whether affirmative or negative—that may create a potential COI.

c. A completed COI Questionnaire for Preliminary Evaluation of Potential Conflict of Interest, Form AP-001-01, or, for clients other than NRC, a completed Form AP-001-02.

d. A brief description of proposed scope of work. In cases where the scope of work is uncertain, the description should reasonably bound the range of anticipated assignments. Because COI can be site, facility, or project specific, the scope should identify these factors, as applicable.

e. A brief statement regarding the role of the work in the context of the overall program or contract.

f. An assessment of programmatic impact of not using the prospective individual or organization as proposed, including indication of available alternative individuals or organizations.

g. Other information required by AP-005, Obtaining Subcontract Services, or AP-006, Obtaining Consultant Services, as applicable.

6.5 The SEC shall evaluate any potential COI using the information provided in the evaluation portfolio and the criteria provided in Section 5.A or 5.B, as appropriate. This evaluation may be facilitated by using the flow chart in Figure 1 or Figure 2, respectively. The Vice President of the Division may delegate evaluation of potential COI and preparation of a recommendation to a committee member for final action by the committee as a whole.

6.6 The SEC shall prepare a brief report of its finding and basis for same.

a. If no potential COI is found, the report will be transmitted to the manager for action.

b. If the SEC determines that there is a potential COI, one of the following actions shall be taken.

- Exclude the individual or organization from projects funded by the client.

This approach is generally appropriate in cases where the SEC is convinced there is a COI (i.e., the potential COI is unlikely to be ruled out by the client), application for a waiver is inappropriate, alternative sources of services are available, and similar situations.

In such cases, the SEC report will document the clients and projects, if any, on which the individual or organization can work.

- Request a formal review of COI by the client.

In such cases, the SEC report, evaluation portfolio, and other supporting information will be transmitted to the client by the Division Vice President. Supporting information should include, as appropriate, (i) specific factors that mitigate against a COI developing; (ii) specific aspects of the scope of work that eliminate the need for the individual or organization to review his/her/its own work; (iii) information explaining why the work the individual or organization would perform for the client is not the same as or similar to work previously, concurrently, or planned to be conducted for other clients; and (iv) information explaining why the work the individual or organization would perform for the client is not likely to be used in a manner that would give rise to a COI (e.g., why work for NRC would not be used in a license application for a repository or interim storage facility).

- Request a waiver by the client.

This approach is generally appropriate in cases where the SEC is convinced there is a COI (i.e., the potential COI is unlikely to be ruled out by the client), application for a waiver is appropriate, alternative sources of services are not available, the candidate individual or organization offers unique skills that are not otherwise available, and similar situations.

In such cases, the SEC report, evaluation portfolio, and other supporting information will be transmitted to the client by the Vice President of the Division. Supporting information should include the items delineated in Section 6C of this procedure, as appropriate.

6.C. MITIGATION AND WAIVER

In unusual cases, it will be desirable to engage the services of an eminently qualified individual or organization with a potential COI. The following steps shall be followed when such situations arise.

6.7 The SEC shall make a determination based on the evaluations delineated in Section 6B of this procedure concerning whether the benefit outweighs the negative effect of the COI. If so, the SEC shall propose administrative controls to mitigate the effect of such COI and will petition the client for a waiver from the requirements of this procedure. NRC or other clients have sole discretion in granting such waivers on a case-by-case basis. The results of such determination shall be documented in a Source Evaluation Committee Record.

6.8 Proposed means to mitigate a potential COI may incorporate an appropriate combination of factors that include, but are not limited to (i) independent review and approval by NRC or other client of the work that creates the potential COI, (ii) incorporation of the work that creates the potential COI in a consensus standard, and (iii) acceptance of the work that creates the potential COI by the technical community, as may be demonstrated by its publication, favorable review,

and implementation in scientific or engineering practice. The selection, implementation, and evaluation concerning the effectiveness of any mitigating factors to be applied in a given situation are NRC or other client decisions. The results of such determination shall be documented in a Source Evaluation Committee Record.

6.9 For the special case of candidates participating in peer reviews, advisory groups, or workshops, proposed means to mitigate a potential COI may incorporate administrative controls that include, but are not limited to (i) requiring full disclosure and documentation describing relationships, if any, with individuals or organizations that may give rise to actual or potential COI in the event of a contract/subcontract award; (ii) providing for a balance of differing technical perspectives in selection of peer review or workshop members; (iii) offsetting the potential COI by selecting a preponderance of members who have no COI; (iv) segregating the individual's comments to facilitate subsequent identification and evaluation of individual bias; (v) requiring individual expression of dissenting opinions; (vi) proscribing the individual from reviewing and commenting on particular portions of the subject matter; and (vii) controlling the end use of the results of such peer review or workshop to preclude an unacceptable programmatic impact. The client will evaluate and determine acceptability of the means proposed by the Division to mitigate a potential COI. The results shall be documented in client correspondence.

6.10 When submitting a waiver request to the client, the Division shall enclose a copy of the proposed statement of work for the candidate individual or organization in question. In addition, the waiver request shall include the résumé of the candidate/individual or, in the case of an organization, its current scope of work. Additionally, titles of papers by the individual or organization will be provided to NRC or other client. In the case of a waiver request for an organization, current and projected future work shall be identified along with the funding organization, and a listing of relevant papers/articles that have been published under the organization name.

6.11 Waiver actions are taken at the sole discretion of the client. In the case of NRC, such actions are taken consistent with the requirements of NRC Acquisition Regulation 2009.570-9. Such actions are strictly limited to those situations in which (i) the work to be performed under the contract is vital to the NRC program, (ii) the work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest, and (iii) contractual review and surveillance methods can be employed by the NRC to neutralize the conflict.

7. RECORDS

All items identified as documentation within this procedure shall be maintained in personnel qualification records in accordance with QAP-012, Quality Assurance Records Control.

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Table 1. Summary of Documentation Requirements to Support Evaluation Under AP-001

Document or Information	Individuals and Organizations not Subject to Full Review (Section 6A)	Individuals and Organizations Subject to Full Review (Section 6B)
Resumé (6.4.a, sufficient to establish technical qualifications)	✓	✓
Complete work history (6.4.a)		✓
Signed COI letter (6.4.b)		✓
Completed COI questionnaire (6.4.c)		✓
Description of proposed scope of work (6.4.d)	✓	✓
Statement of the role of work (6.4.e)		✓
Statement of programmatic impact (6.4.f)		✓
AP-005 or AP-006 information (6.4.g)	✓	✓
Manager assessment memorandum	✓	✓
SEC determination memorandum	✓	✓
Support of request for waiver (6C) (if applicable)		✓
Foreign National and Information Access Determination (6 and 6.4.g and Figure 3)	✓	✓

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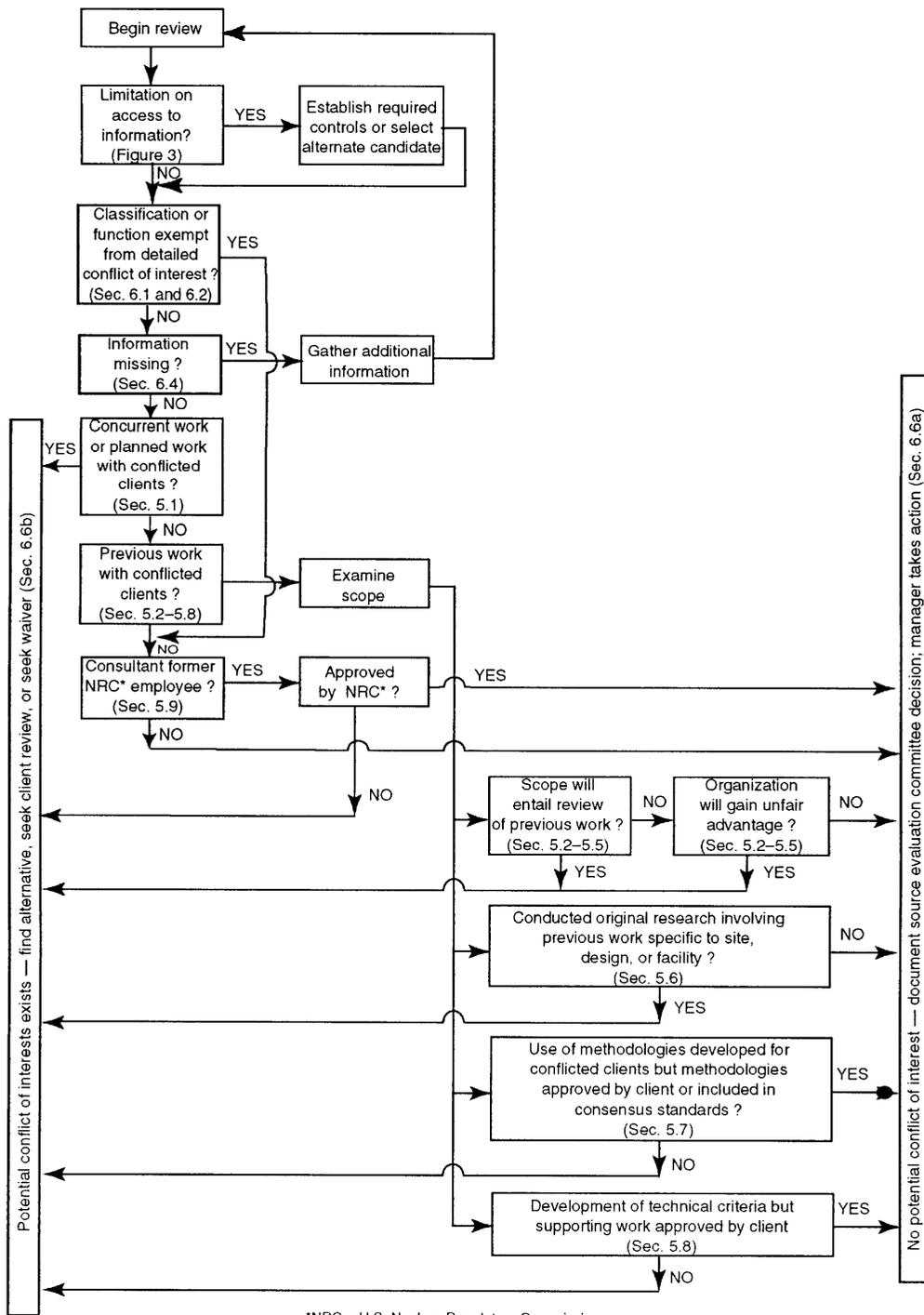


Figure 1. Review Process for Determining Potential COI for Work Funded by NRC

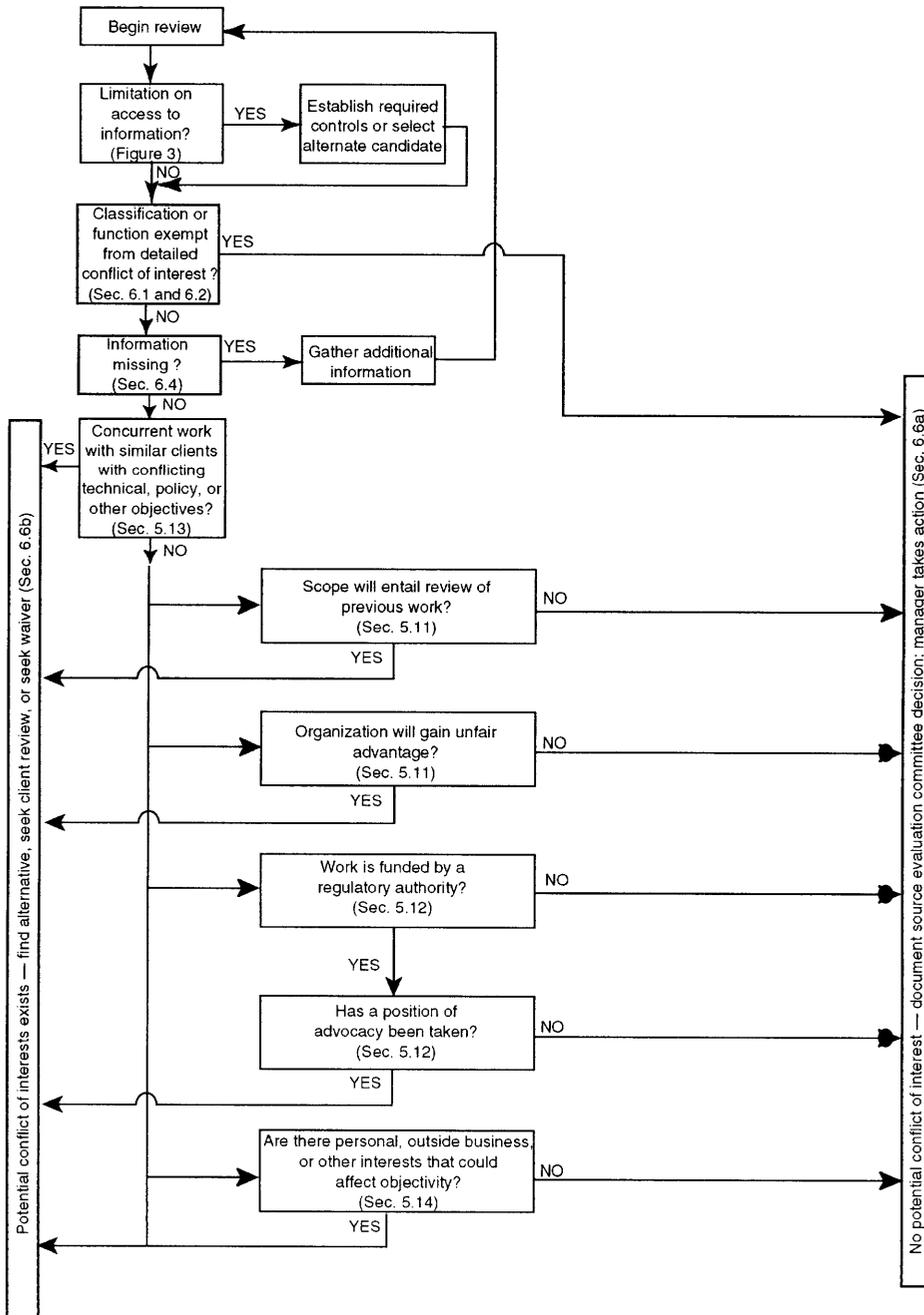


Figure 2. Review Process for Determining Potential COI for Work Funded by Organizations Other Than NRC

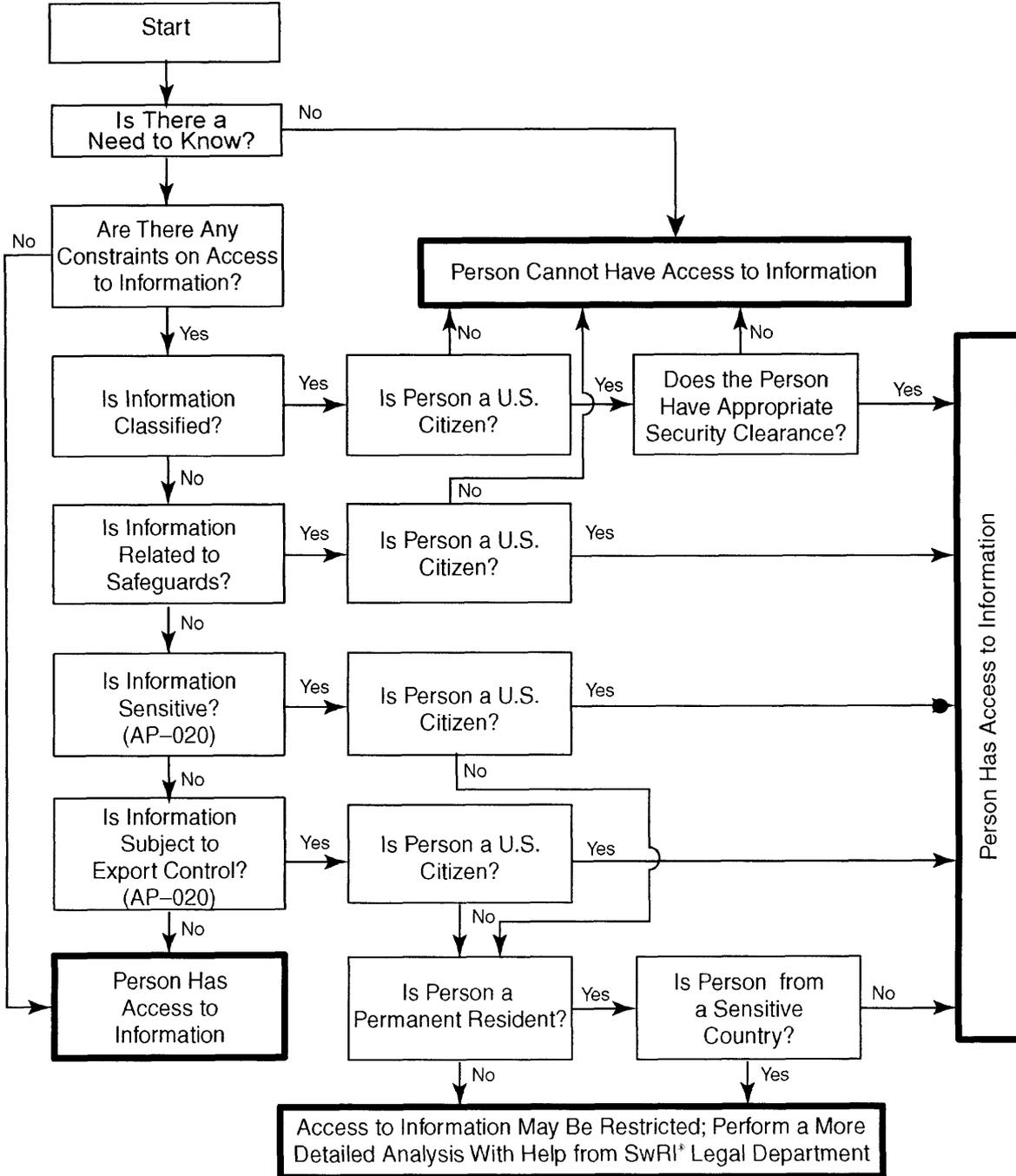


Figure 3. Evaluation of Access to Information by Staff, Consultants, and Subcontractor Persons