

DEPARTMENT OF EDUCATION**Office of the Secretary****Notice of Certification**

SUMMARY: The Secretary of Education certifies that the national interest requires that special government employees, whose non-Federal employer is an institution of postsecondary education, retained by the Department to work on "Project EASI" (Easy Access for Students and Institutions), be permitted to act as agent or attorney, and receive compensation for such services, for their employer-institution in matters pending before the Department which arise under a Program Participation Agreement required by Title IV of the Higher Education Act of 1965, as amended, (HEA) in certain circumstances.

FOR FURTHER INFORMATION CONTACT: Susan A. Winchell, Attorney, Ethics Counsel Staff, Office of General Counsel, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202-2152. Telephone: 202/401-8309.

SUPPLEMENTARY INFORMATION: Section 205 of Title 18 generally prohibits Federal employees from acting as an agent or attorney for any non-Federal person or organization before any employee of the Executive or Judicial branch in a matter in which the United States is a party or has a direct and substantial interest. Section 203 of Title 18 prohibits employees from receiving compensation for such services. These broad prohibitions are modified somewhat for those who serve as "special government employees," as that term is defined in 18 U.S.C. Section 202(a), i.e., employees who are appointed for not more than 130 days in a 365-day appointment period.

A special Government employee who works for no more than 60 days during

his or her 365-day appointment period may not act as an agent or attorney for any non-Federal person or organization, or receive compensation in connection with providing that service, with respect to matters involving specific parties in which he or she has participated personally and substantially as a Government employee. If a special government employee exceeds 60 working days during his or her appointment year, he or she also may not act as an agent or attorney for non-Federal persons and organizations, or receive compensation for those services, in any specific party matters pending before their employing agency, even though the employee did not participate in the matter as a Government employee. (18 U.S.C. 205(c) and 203(c)).

Sections 203 and 205 permit the head of an agency to waive the restrictions on special government employees acting as an agent or attorney, and receiving compensation for those services, for non-Federal persons and organizations in the performance of work under a grant or contract when he or she certifies in writing that to do so is required by the national interest. (18 U.S.C. 205(f) and 203(e)).

"Project EASI" is an integrated delivery system for all participants in the student financial aid system, including students, lenders, and schools. It is essential for the Department to have high quality input from all participants in order for Project EASI to be effective. All of the special Government employees hired to work on Project EASI are student financial aid officials at institutions participating in student financial assistance programs under title IV of the HEA. Because of the nature of this project, the participation of student financial aid officials is vital.

The special Government employees working on Project EASI frequently act as agents for their employer-institutions on matters arising under a Program

Participation agreement required for each institution participating in student financial assistance programs under Section 487 of the HEA. The Secretary expects that some of these special government employees will work for more than 60 days during the course of a 365-day appointment period.

The Secretary has determined that if the special Government employees working on Project EASI are prohibited from acting as agents for their employer-institutions, or receiving compensation for those services, with respect to matters arising under a Program Participation Agreement that are pending before the Department, it will not be possible for the Department to obtain the services of qualified consultants to work on Project EASI. Therefore, the Secretary certifies that the national interest requires that Special government employees working on Project EASI, who are employed by institutions of postsecondary education, be permitted to act as agents for their employer-institutions, and receive compensation for those services, in matters arising under a Program Participation Agreement that are pending before the Department. This certification does not cover Department matters on which the special Government employee has participated personally and substantially on behalf of the Department, even if it is a matter arising under the Program Participation Agreement. No such matter should arise because special Government employees must disqualify themselves from participating in Department matters involving their own institutions.

(Catalog of Federal Domestic Assistance Number: Not Applicable)

Dated: July 18, 1996.

Richard W. Riley,
Secretary of Education.

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