

INFORMATION PAPER

AMCCC-G

30 January 1997

SUBJECT: Waiver of Restriction of Use of Special Government Employees; Waivers issued pursuant to 18 U.S.C. 208(b)(3)

PURPOSE: To provide information regarding recent changes in the Federal Procurement Integrity Act as it relates to Governmental Use of Special Government Employees pursuant to the Federal Advisory Committee Act.

1. Pursuant to 18 U.S.C. 208(b)(3), an agency may determine in an individual case that the prohibition of 18 U.S.C. 208(a) should not apply to a special Government employee serving on, or an individual being considered for, appointment to an advisory committee established under the Federal Advisory Committee Act, notwithstanding the fact that the individual has one or more financial interests that would be affected by the activities of the advisory committee.

2. The agency's determination must be based on a certification that the need for the employees services outweighs the potential for a conflict of interest created by the financial interest involved.

3. Waivers issued should comply with the following requirements:

(a) The advisory committee upon which the individual is serving, or will serve, is an advisory committee within the meaning of the Federal Advisory Committee Act, 5 U.S.C. app.;

(b) The waiver must be issued in writing by the Government official responsible for the individual's appointment (or other Government official to which authority to issue such waivers has been delegated) after the official reviews the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978;

(c) The waiver must include a certification that the needs for the individual's services on the advisory committee outweighs the potential for a conflict of interest;

(d) The facts upon which the certification is based should be fully described in the waiver, including the nature of the

financial interest, and the particular matter or matters to which the waiver applies;

(e) The waiver should describe any limitation on the individual's ability to act in the matters or matters;

(f) The waiver must be issued prior to the individual taking any action in the matter or matters; and

(g) The waiver may apply to both present and future financial interest of the individual, provided the interests are described with sufficient specificity.

4. Agency's certification for the individual's services. In determining whether the need for an individual's services on an advisory committee outweighs the potential for a conflict of interest created by the disqualifying financial interest, the responsible official may consider the following factors:

(a) The type of interest that is creating the disqualification (e.g., stocks, bonds, real estate, other securities, cash payment, job offer, or enhancement of a spouse's employment);

(b) The identity of the person whose financial interest is involved, and if the interest is not the individual's, the relationship of that person to the individual;

(c) The uniqueness of the individual's qualifications;

(d) The difficulty of locating a similarly qualified individual without a disqualifying financial interest to serve on the committee;

(e) The dollar value of the disqualifying financial interest, if it is known or can be estimated (e.g., the amount of cash payment which may be gained or lost, the salary of the job which will be gained or lost, the predictable change in either the market value of the stock or the actual or potential profit or loss or cost of the matter to the company issuing the stock, the change in the value of real estate or other securities);

(f) The value of the financial instrument or holding from which the disqualifying financial arises (e.g., the face value of the stock, bond, other security or real estate) and its value in relationship to the individual's assets. If the disqualifying financial interest is that of a general partner or organization specified in section 208, this information must be provided only to the extent that it is known by the employee; and

(g) The extent to which the disqualifying financial interest will be affected individually or particularly by the actions of the advisory committee.

5. This point paper is consistent with the point paper dated 30 December 1996 with subject: Restrictions on the Use of Contractor Employees.

Prepared by:

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