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MEMORANDUM

TO: Jim DeWilde, Associate Director of Student Aid

FROM: Roger Leishman, Assistant Attorney General

DATE: October 6, 2015

SUBJECT: Application of FLSA to Paraprofessional Advisement courses

You have asked whether time spent by students while participating in Western Washington University's 300 level leadership courses constitutes uncompensated employment under the Fair Labor Standards Act (FLSA). The catalog description for SAA 340, "Paraprofessional Advisement," states that the course "[e]mphasizes the helping relationship in various student affairs advising, educational and residential program areas." Students enrolled in these courses are slated to begin or are already serving in the campus leadership roles of Resident Assistants, Orientation Student Advisors, Academic Student Advisors and Tutors. The students receive in-kind and stipend compensation from the University for their performance of the student leadership position duties, but not for their time spent participating in the required 300-level leadership courses each quarter, instead paying tuition and receiving academic credit in return.

FLSA is administered by the federal Department of Labor. Western should be able to rely on the Department's 1993 Field Handbook provision 10b24(a) (http://www.dol.gov/whd/FOH/FOH_Ch10.pdf), which states "students serving as resident hall assistants or dormitory counselors, who are participants in a bona fide educational program, and who receive remuneration in the form of reduced room or board charges, free use of telephones, tuition credits, and the like, are not employees under the Act." In contrast with such roles, the Field Guide goes on to state "[o]n the other hand, an employment relationship will generally exist with regard to students whose duties are not part of an overall educational program and who receive some compensation. Thus, for examples, students who work at food service counters or sell programs or usher at athletic events, or who wait on table or wash dishes in dormitories

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in anticipation of some compensation (money, meals, etc.) are generally considered employees under the Act.” *Id.* at 10b24(b).

Based on these provisions of the Field Guide and the nature of the positions at issue, I conclude that when the content of the academic course enhances job performance in campus leadership roles, the students’ course participation is excluded from the definition of employment services under FLSA, and Western is not required to make any payment for course participation time.

This reasoning would not apply to other student positions that are not directly related to an educational experience, such as food service jobs for which the student is not engaged in any ancillary leadership educational course training. Campus positions may also be distinguished from unpaid internships, where courts apply a multifactor test to determine whether the student’s work primarily benefits the employer rather than the student.

Please let me know if you have any additional questions.