

Sam Houston State University
A Member of The Texas State University System

Finance & Operations Policy FO-32
Payments for Professional Services

I. **Purpose** - The purpose of this policy is to provide a uniform guideline and procedure for the payment of compensation for professional services rendered to Sam Houston State University ("University") by faculty and staff of the University outside their regular employment and duties.

II. **Definitions**

Correspondence Course: a method of providing instruction for academic credit through the systematic exchange of written course materials between student and teacher.

Correspondence Course Grader: the teacher or faculty member paid by the University to take charge of the written work of the correspondence course student, grade lessons, prepare and grade a final examination and submit a course grade.

Professional services: services requiring unique knowledge or expertise not generally available from the average person, usually, but not always, associated with particular specialties. The definition as generally used here does not include services within the scope of practice, as defined by state law, of: accounting, architecture, land surveying, medicine, optometry, or professional engineering. Accordingly, professional services (as the term is herein used) should be, but not necessarily are, exempt from regulation by the Professional Services Procurement Act (Government Code § 2254.001).

Continuing Education: generally nonacademic credit courses, but the course may be used for continuing accreditation or maintenance of a particular expertise.

Extended Learning: generally non-academic credit courses, but the course may be used for continuing accreditation or maintenance of a particular expertise.

Consulting Service: the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee (Government Code § 2254.021). As the term is used here, consulting services are provided to the University by university employees providing "consulting" limited to a particular fact pattern or situation calling for obvious specialized knowledge and expertise, usually requiring a written report/evaluation with specific recommendations for change or improvement.

University personnel, all of whom fall within this umbrella policy statement, are not totally independent to pursue contracting with the University or its managed grants/contracts. The personnel must work around and are subject to existing university duties; they must be paid through personnel action forms instead of direct "gross" payments; they must have payroll taxes withheld, and they still generally report to the same persons as they do on a day to day basis, albeit perhaps on a different "level." Since there are residual elements of an employer/employee relationship that destroy an independent contractor status, University personnel performing functions for the University or an activity under management by the University are, by definition, not independent contractors. It is impossible to consider University personnel performing any University activity not being subservient to the University in some fashion, and thus these types of University activities do not fall within the Government Code definition. While certain elements of an independent activity exist, the complete mix does not exist, and thus, for legal/tax purposes, the personnel are employees for the purposes of this policy and university payroll activities. Since the personnel are employees, the attendant statutory requirements do not apply.

Lecturing: the process of imparting knowledge via speech and documents developed for such speech, herein defined as speeches and documents for non-academic credit classes or groups.

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Internal Funding Sources: funds originating within or received and/or managed by the University, including, but not limited to, research grants and other funds managed by the Office of Contracts and Grants.

Professional Activities: activities related to the individual's professional stature, such as, but not limited to: professional affiliations, speeches, lectures, publications, and similar activities.

Faculty/staff temporarily not on payroll: employees not currently under contract with the university, such as but not limited to: a nine-month employee on summer leave, an employee taking voluntary unpaid leave, etc.

III. Compensation and Activity Limitations - Compensation shall be paid in accordance with the following guidelines:

- A. The maximum total professional compensation per fiscal year from all internal sources of the University for the providing faculty/staff member shall be the sum of the individual's twelve month full time salary or wage, plus not more than twenty five percent of the nine month average salary of full professors at Sam Houston State University (based on non-administrative positions) as calculated by the office of the Vice President for Academic Affairs as of September 1 each year.
- B. Each Fall Semester shall begin a new base period for computation of the maximum total professional compensation.
- C. All such consulting, lecturing, correspondence course grading or other professional activities shall not conflict with any regularly scheduled University work, activity or organized classes.
- D. The maximum professional compensation a University employee may receive in any one month shall be governed by the following:
 1. Continuing Education, Extended Learning, and/or Correspondence Course Grading
 - a. Independent sources of funding: no monthly limit, subject to an overall aggregate maximum which shall not exceed the sum of the individual's twelve month full time stipend [salary] or wage, plus not more than twenty five percent of the nine month average salary of ____ [full] professors at Sam Houston State University (based on non-administrative positions) as calculated by the office of the Vice President for Academic Affairs and Student Services as of September 1 each year.
 - b. Federally supported funding: as per federal guidelines, which generally requires pro rata sharing of regular salary and benefits on percentage of effort basis. Federal rules prohibit compensation in excess of the regular salary of an employee and impose a shared cost based on a percentage of effort for the task, unless specific written authorization from the appropriate government agency is received.
 2. All other activities:
 - a. Federally supported funding: as per federal guidelines, which generally requires pro rata sharing of regular salary and benefits on percentage of effort basis. Federal rules prohibit compensation in excess of the regular salary of an employee and impose a shared cost based on a percentage of effort for the task, unless specific written authorization from the appropriate government agency is received. If permitted in writing by the federal granting agency, the University may allow compensation in excess of the regular salary of an employee up to the limit established by the granting agency, or as described in this procedure, whichever is lesser.

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- b. State of Texas funding: compensation in excess of regular salary of an employee is generally prohibited. Exceptions may apply, such as those statutorily allowed for the College of Criminal Justice. If permitted by the state granting agency the University may allow compensation in excess of the regular salary of an employee up to the limit established by the granting agency, or as described in this procedure, whichever is lesser.
- c. Independent sources of funding: no monthly limit, subject to an overall maximum which shall not exceed the sum of the individual's twelve month full time stipend [salary] or wage, plus not more than twenty five percent of the nine month average salary of _____ [full] professors at Sam Houston State University (based on non-administrative positions) as calculated by the office of the Vice President for Academic Affairs and Student Services as of September 1 each year, in aggregate from funding via internal sources.

IV. Procedural Requirements

Payments for professional services will be, as required by law, treated as payroll items and accordingly as salary payments, and are therefore to be submitted on the appropriate payroll action form. Such funding sources will be fully liable for appropriate payroll taxes and fringe benefits. Full time employees may not be reimbursed for professional services from any state account (fund group 10).

V. Compliance

Adherence to this policy is the responsibility of the initiating party, and authorization must be approved by the President through appropriate channels using the appropriate approval form, generally a Payroll Action Form. Further, the person must have had approvals for such activities documented as per Sections 4.(11) and 5.4, Rules and Regulations of the Texas State University System.

VI. Superseding Law

This policy shall be subordinate to any overriding state or federal law, and may only be incorporated to the legal extent allowable for payment of professional services by University faculty/staff.

VII. Publication/Bid Requirements

Any potential contract in excess of \$14,000 per fiscal year and not falling within this policy's guidelines (i.e., non university employee, etc.) must be published via appropriate professional services announcements in the Texas Register. Such professional services may, in some cases, require bidding procedures in compliance with the Professional Services Act.

VIII. Benefits

Dual employment with the State regulations shall apply so that duplicated benefits shall not result.

Reviewed by: R. Dean Lewis - Vice President for Finance & Operations – 11-01-08
Next review: 2/1/10