

**SOUTH DAKOTA BOARD OF REGENTS**

**Full Board**

**AGENDA ITEM: 18**

**DATE: April 1-2, 2015**

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**SUBJECT: BOR Policy 5:6 - Student FICA Exemption**

IRS regulations provide for a waiver of the Federal Insurance Contributions Act (FICA) for students employed by a university that are enrolled and regularly attending classes at the school. To qualify for the exemption, the educational aspect of the relationship between the student employee and the employer must be predominant. A relevant factor in evaluating the student's course load is the load relative to a full-time course workload at the school. This determination is made based on the regular definitions and practices of the school.

Following up on a payroll issue last year related to FICA exemption, it was determined that each campus was determining its own standard of what constituted the necessary threshold for the FICA exemption. BAC and AAC have come to agreement that we need to be consistent across the system in order to avoid any payroll tax liability. The following standard will be put in place with BOR Policy 5:6:

- An undergraduate student must be actively enrolled in the following number of credits to be considered for the FICA exemption:
 

Fall and Spring	9 Credit Hours
Summer	5 Credit Hours
  
- A graduate student must be actively enrolled in the following number of credits to be considered for the FICA exemption:
 

Fall and Spring	5 Credit Hours
Summer	3 Credit Hours

If a student is not enrolled for the minimum number of hours for a particular payroll period, he/she would not be exempted from FICA. If the student subsequently enrolls for the necessary minimum, the universities cannot go back and correct previous payrolls. This is to avoid negative FICA payments to the federal government, which is a huge concern of the State Auditor.

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**RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR**

Approve BOR Policy 5:6 – Student FICA Exemption.

# SOUTH DAKOTA BOARD OF REGENTS

## Policy Manual

**SUBJECT:** Student FICA Exemption

**NUMBER:** 5:6

### **1. Preamble**

IRS regulations (§31.3121(b)(10) of the Federal Insurance Contributions Act (FICA) and Revenue Procedure 2005-11) provides an exemption from Federal Insurance Contributions Act (FICA) contributions for students employed by a university that are enrolled and regularly attending classes at the school. To qualify for the exemption, the educational aspect of the relationship between the student employee and the employer, as compared to the employment aspect, must be predominant.

### **2. Eligibility**

- 1) Students who are working that are not full-time employees, based on standard employee definitions may be eligible for the exemption. Student employees that must be licensed, are considered professional employees, or that are receiving employee benefits, are not disqualified, although these criteria should be considered when looking at all the facts and circumstances in determining the predominant aspect of the relationship.
- 2) The predominant aspect of the relationship must be that the student is regularly attending classes at the school in pursuit of a course of study. This determination must be made each academic term. The class-load and workload must be considered together to determine which is predominant.
- 3) A relevant factor in evaluating the student's course load is the load relative to a full-time course workload at the school. This determination is made based on the regular definitions and practices of the school.
- 4) A relevant factor in evaluating the service or work relationship is the employee's work schedule and the number of hours worked per week. As the number of hours approach 40, the likelihood is that the service aspect is predominant.

### **3. Course Load Status For Determining FICA Exemptions**

- 1) An undergraduate student must be actively enrolled in the following number of credits to be considered for the FICA exemption:

Fall and Spring	9 Credit Hours
Summer	5 Credit Hours

- 2) A graduate student must be actively enrolled in the following number of credits to be considered for the FICA exemption:

<u>Fall and Spring</u>	<u>5 Credit Hours</u>
<u>Summer</u>	<u>3 Credit Hours</u>

#### **4. Payroll Operation**

- 1) The student must be enrolled in the minimum number of credits at the start of the term to be eligible for the FICA exemption. If a student is not enrolled for the minimum number of hours for the academic term, they would not be exempted from FICA.
- 2) If the student subsequently enrolls for the minimum number of hours after a payroll is run, corrections cannot be made to previous payrolls.

**SOURCE: April 2015**