

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 6 - G
DATE: October 7, 2020

SUBJECT

BOR Policies 2:29 and 5:6 – FICA/Re-Employment Exemptions (First Reading)

CONTROLLING STATUTE, RULE, OR POLICY

None.

BACKGROUND / DISCUSSION

At the June 2020 BAC meeting, the BOR Shared Payroll Center (SPC) requested a change to BOR Policy 5:6 – Student FICA Exemption. The purpose was to align with BOR Policy 2:29 – Definition of Credits and Related Institutional Requirements and IRS Regulations, IRC Section 3121(b)(10) – Student FICA Exception. SPC also recommended addressing Re-employment Exemptions (previously known as Unemployment) in BOR Policy 5:6 to align with the standards used for FICA Exemptions.

IRS Regulation on FICA Exemption

IRS Section 3121(b)(10) (Student FICA Exception) and Revenue Procedure 2005-11 provides an exemption from FICA contributions for students employed by a university that are enrolled and *regularly attending classes* at the school. Rev. Proc 2005-11, 2005-1 C.B 307, sets forth new guidelines for determining an education institution and whether an individual is a student at an institution of higher education for purposes of the student FICA exemptions.

- The guidelines state an individual who is a half-time undergraduate student or a half-time graduate or professional student (half-time student) will qualify for the student FICA exception, provided that the individual is not a professional employee of the institution.
- Guidelines go on to state that an individual, who is a half-time student, and not a career employee, may qualify for the student FICA exception.
- A half-time undergraduate student is an enrolled student who is carrying a half-time academic workload, as determined by the institution that amounts to at least half of the workload of the applicable minimum requirement outlined in the definition of a full-time student.

(Continued)

DRAFT MOTION 20201007_6-G:

I move to approve the first reading of the proposed BOR Policies 2:29 – Definitions of Credits and Related Institutional Requirement and 5:6 – Student FICA and RA Exemption, as presented.

FUTA (Federal Unemployment) Tax – Publication 15

States that “students enrolled and *regularly attending classes*, performing services for public school, college or university” are exempt from FUTA taxes. Due to not having a clear definition of this under State Statute for State Re-employment, the recommendation for Student Re-employment exemptions shall follow the Federal guidelines.

BOR Policy 2:29 - regarding student half-time status

Definition of credits and related institutional requirements states that half-time status for active students is as follows:

Undergraduate		Graduate	
Fall, Spring & Summer	6 credits	Fall, Spring & Summer	5 credits

Current BOR Policy 5:6- Student FICA Exemption

This policy currently states that an active student must have the following course load status for determining FICA Exemptions:

Undergraduate		Graduate	
Fall & Spring	9 credits	Fall & Spring	5 credits
Summer	5 credits	Summer	3 credits

BAC voted to approve the recommended changes as presented by SPC.

IMPACT AND RECOMMENDATIONS

Updating BOR Policy 5:6 will align the definition of a student’s half-time status within the BOR system: Undergraduate – 6 credits and Graduate – 5 credits for Fall, Spring, and Summer terms. Wording has also been included to exempt South Dakota Re-employment (previously known as Unemployment) in the policy to follow the same guidelines as FICA Exemptions in accordance with FUTA standards on exemptions for enrolled and *regularly attending students*. Re-employment was not addressed in the current policy; however, institutions are treating Re-employment the same as FICA.

ATTACHMENTS

Attachment I – Policy 2:29 – Definitions of Credits and Related Institutional Requirements

Attachment II – Policy 5:6 – Student FICA and RA Exemption

SOUTH DAKOTA BOARD OF REGENTS**Policy Manual****SUBJECT:** Definition of Credits and Related Institutional Requirements**NUMBER:** 2:29**1. Undergraduate****A. Purpose**

- 1) Expose students to the knowledge, competencies, and experience deemed essential for degrees conferred by the institution.
- 2) Certify that students have met institutional standards.
- 3) Provide faculty with the basis to act as a reference for students seeking employment.

B. Definitions

1) Credits in Residence

A Credit in Residence within the Board of Regents system is a course offered by any of the degree-granting Regental institutions at any approved site using any approved method of delivery.

2) Institutional Credits

An institutional credit is a credit offered by the degree granting institution and includes credits that are part of a formal collaborative agreement between that institution and another Regental institution.

3) Validated Credits

Credit earned for college-level courses by validation methods such as Credit by Exam, CLEP, AP, portfolio, etc. within the Regental system will not be considered "credits in residence."

C. Institutional Credit Requirements for Degree-Seeking Students

- 1) Each baccalaureate level degree program offered shall require one hundred twenty (120) credit hours and each associate level degree program offered shall require sixty (60) credit hours. Exceptions may be granted for those cases in which a program must comply with specific standards established by external accreditation, licensure or regulatory bodies or for other compelling reasons approved by the executive director in consultation with the Board of Regents' president. All new programs proposed after January 1, 2012 will comply with this requirement and all existing programs will be modified to conform to this requirement by June 30, 2012.

- 2) Minimum number of credit hours that must be earned from the institution granting the degree:

Baccalaureate	30 hours
Associate	15 hours

- 3) Number of the last credit hours earned preceding completion of the degree that must be earned from the institution granting the degree:

Baccalaureate	15 of the last 30 hours
Associate	8 of the last 15 hours

The campus chief academic officer may make exceptions to this requirement in those cases where there are unique factors, such as participation in an approved study abroad program or in other similar authorized experiences.

- 4) Minimum number of credit hours specified in the major or minor requirements that must be completed at the degree granting institution: 50 percent. However, this requirement may be waived for students enrolled in the set of majors offered at the system's Centers which include in the established programs of study common courses offered by one of the other Regental universities. In addition, the Vice President for Academic Affairs/Provost may make exceptions to this requirement for individuals based on the student's prior learning experiences.
- 5) With prior approval by the Board of an authorizing inter-institutional agreement degree seeking students at one institution may complete requirements for and may have transcribed a major offered at the partner Regental institution. This major will be recorded on the student's transcript in conjunction with a degree/major at the student's home university. These majors from a second institution will only be recorded on the transcript in conjunction with a degree and major at the student's home institution.
- 6) Degree seeking students may complete requirements for a minor at any Regental university that has been approved to grant that minor. This minor will be recorded

on the transcript in conjunction with a degree/major at that university or a degree/major at any other Regental university. A minor will only be recorded on the transcript in conjunction with a degree and major.

- 7) Student course load status is based on the number of credit hours for which a student is enrolled (this applies to fall, spring, and summer semesters).

½ Time Status	6 credit hours minimum
¾ Time Status	9 credit hours minimum
Full Time Status	12 or more credit hours
Overload Status	19 or more credit hours.

To be eligible for overload status, a student must have a 2.70 cumulative grade point average and approval by the Dean of the student's division/college at the home institution.

- 8) Undergraduate Student Course Load Status for Determining FICA Exemptions and Exemptions from South Dakota Re-Employment: For the purposes of determining undergraduate student employee exemptions under §31.3121(b)(10) of the Federal Insurance Contributions Act (FICA) and Revenue Procedure 2005-11, undergraduate students must take a minimum of 96 credit hours in the fall ~~and~~ spring and summer terms ~~or 5 credit hours in the summer term~~. Exemptions from South Dakota Re-Employment should follow the same guidelines as FICA Exemptions in accordance with FUTA See standards. See also Board Policy 5:6.

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2. Graduate

A. Purpose

Recognizes that graduate education is an in-depth study of the major field that relies upon interactions both in and out of the classroom and is not just a collection of courses.

Ensures that the student develops a mentoring relationship with the faculty, benefits from the collective experiences of the students in the program, and is immersed in the intellectual atmosphere of the program derived from the special expertise of the faculty.

B. Definitions

1) Credits in Residence

A Credit in Residence within the Board of Regents system is a course offered by any of the degree-granting Regental institutions at any approved site using any approved method of delivery.

2) Institutional Credits

An institutional credit is a credit offered by the degree granting institution and includes credits that are part of a formal collaborative agreement between that institution and another Regental institution.

C. Institutional Credit Requirements for Degree-Seeking Students

- 1) Minimum percentage of credit hours in the graduate degree program that must be completed from the institution granting the degree: 60 percent.
- 2) Maximum percentage of credit hours in the graduate degree program that may be required from the institution granting the degree: 75 percent.
- 3) Program may require that certain courses be completed from the institution granting the degree. Courses that must be completed from the institution granting the degree must be specified in the institution's graduate catalog.
- 4) When the requirements set by a specialized accrediting agency exceed the BOR requirements, those of the specialized accrediting agency take precedence.
- 5) To be eligible for overload status, a student must have approval by the Graduate Dean at the student's home institution. The Graduate Dean at the home institution may certify that a student enrolled for less than 9 credit hours is to be considered full time for purposes of awarding assistantships and tuition reduction.
- 6) Graduate student course load is based on the number of credit hours for which a graduate student is enrolled. Each institution determines graduate course load status based on individual program requirements.
- 7) Graduate Student Course Load Status for Determining FICA Exemptions and Exemptions from South Dakota Re-Employment: For the purposes of determining graduate student employee exemptions under §31.3121(b)(10) of the Federal Insurance Contributions Act (FICA) and Revenue Procedure 2005-11, graduate students must take a minimum of 5 credit hours in the fall, ~~and~~ spring, and summer terms ~~or 3 credit hours in the summer term~~. Exemptions from South Dakota Re-Employment should follow the same guidelines as FICA Exemptions in accordance with FUTA standards. See also Board Policy 5:6.

SOURCE: BOR, January 1999; BOR, August 2002; BOR, June 2004; BOR,

August 2005; BOR, May 2009; BOR, October 2011; BOR, December 2011; BOR, December 2013; BOR, April 2015; BOR, December 2020.

SOUTH DAKOTA BOARD OF REGENTS**Policy Manual**

SUBJECT: Student FICA and RA Exemption

NUMBER: 5:6

A. PURPOSE

To clarify student eligibility for the FICA tax and RA exemption.

B. DEFINITIONS

1. **Federal Insurance Contribution Act (FICA):** FICA is the federal program that funds Social Security retirement and Medicare benefits.
2. Reemployment Assistance (RA): RA is the state program that funds Reemployment Assistance benefits, which is an employer tax expense only.

C. POLICY

IRS regulations (31.3121(b)(10) of the Federal Insurance Contributions Act (FICA) and Revenue Procedure 2005-11 provides an exemption from FICA contributions for students employed by a university that are enrolled and regularly attending classes at the school. Publication 15 – (Circular E), Employer’s Tax Guide provides an exemption from Federal Unemployment Tax Act (FUTA) for students employed by a university that are enrolled and regularly attending classes, performing services for public school, college or university. 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.

1. Eligibility

- 1.1. 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.
- 1.2. 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.

- 1.3. 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.
- 1.4. 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.

2. Course Load Status ~~f~~For Determining FICA and RA Exemptions

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

Fall, ~~and~~ Spring & Summer 96 Credit Hours

~~Summer~~ ————— 5 Credit Hours

- 2.2. A graduate student must be actively enrolled in the following number of credits to be considered for the FICA and RA exemption:

Fall, ~~and~~ Spring & Summer 5 Credit Hours

~~Summer~~ ————— 3 Credit Hours

3. Payroll Operation

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

3.3 For payroll periods that overlap two subsequent terms, the FICA and RA exemption process should look at terms in chronological order to determine FICA and RA exemption status.

FORMS / APPENDICES:

None

SOURCE:

BOR April 2015, October 2018, [December 2020](#).