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Date: December 17, 2003
To: Human Resources Directors
Associate Vice Presidents/Deans of Faculty Affairs
Payroll Managers
From: Cathy Robinson 
Assistant Vice Chancellor
Human Resources
Subject: **Public Contract Code Restrictions Impact: Considerations for Proctors, Readers and Graders**

Code: TECHNICAL LETTER
HR/Salary 2003-10

Reference: HR 2003-21
HR/Salary2003-03

Supersedes: HR/Salary 2003-08
(effective 1/1/04)

HR Letter 2003-21 outlined Public Contract Code (PCC) conflict of interest provisions applicable to the California State University (CSU), effective January 1, 2004, as a result of Senate Bill (SB) 41. SB 41 created new PCC sections that address certain CSU employee conflict of interest provisions related to contracting. This technical letter supersedes the previous technical letter HR/Salary 2003-08 relating to proctors, readers and graders working with outside testing agencies who receive funding from a CSU contract (e.g., Educational Testing Services).

Please note that while SB 41 provides more flexibility for employees with teaching or research responsibilities to work on CSU contracts than existed under SB 1467, it does not provide flexibility for employees whose positions do not include teaching or research responsibilities, unless the proctor, reader or grader work is within the course and scope of the employee's regular CSU employment.

The CSU has an established practice of contracting with outside testing organizations such as Educational Testing Services (ETS) to provide proctor, reader and grader services. These outside organizations often hire or contract with CSU employees to perform these services. Some of these testing organizations are funded by state contracts, including CSU contracts.

SB 1467, effective July 1, 2003, through December 31, 2003, prohibits CSU employees from contracting with or being employed by an entity that receives its funding from a state contract, including a CSU contract, unless required by his/her employment. To accommodate the restrictions of SB 1467, CSU employees serving as proctors, readers and graders for these outside testing organizations funded by state contracts have been hired by the campus and paid via CSU payroll (issued by the State Controller's Office).

Distribution:

CSU Presidents
Chancellor's Office Executives
Vice Presidents, Student Affairs
Vice Presidents, Academic Affairs

Vice Presidents, Administration
Directors, Testing
Business Officers

However, effective January 1, 2004, SB 41 modified the impact of SB 1467 and only prohibits CSU employees from contracting with or being employed by an entity that receives its funding from a CSU contract, unless the employee has teaching or research responsibilities or the activity is within the course and scope of the employee's regular CSU employment.

General Guidelines Effective January 1, 2004

- CSU employees with teaching or research responsibilities who serve as proctors, readers or graders will be able to contract with or be hired by a testing agency funded by a state or CSU contract to provide these services.
- CSU employees who perform as proctors, graders or readers within the course and scope of their regular CSU employment will be able to contract with or be hired by a testing agency funded by a state or CSU contract to provide these services.
- Employees who provide proctor, grader, or reader services who do not have teaching or research responsibilities, or who do not perform these activities within the course and scope of their regular CSU employment, will need to be paid for these services through CSU payroll, if the campus determines payment for these services is appropriate. Refer to Attachment A for additional information on employment and overtime guidelines for these services.
- During the course and scope of their employment, certain employees, including Management Personnel Plan (MPP) employees, may be required to perform additional occasional duties related to testing, such as coordinating and/or overseeing administrative issues related to non-campus tests. In accordance with the CSU's Additional Employment policy, represented or nonrepresented employees, including those in the MPP, who are in positions exempt from the overtime provisions of the Fair Labor Standards Act (FLSA), do not receive additional CSU compensation for work considered part of their primary work assignment. However, if determined appropriate by the campus, an exempt employee may be assigned additional employment if the assignment is unrelated to his or her primary work assignment. Questions regarding the CSU's Additional Employment policy and its relationship to employee work assignments should be directed to the campus human resources department, as required.

- Typically, reader and grader work is performed for a specific campus. Occasionally, some reader and grader assignments may be for the CSU but not coordinated directly with the employee's home campus (e.g., reading/grader assignments at a central location such as Concord, CA). In instances, when reader and grader work performed by faculty is to be paid by the CSU, campus human resources, payroll and testing departments need to coordinate to ensure employees are paid for work performed. As required, reimbursement for payroll costs need to be coordinated between systemwide Academic Affairs, the testing organization, and the campus' testing and business affairs/accounting offices, as appropriate.

FLSA Exemption Status For Proctors, Readers and Graders

- Proctor work does not pass FLSA exemption tests and is considered "non-exempt" work.
- Work performed by readers and graders does pass FLSA exemption tests and is considered "exempt" work. Note that the non-exempt Excluded "Reader" classification (code 7172) is not appropriate for readers and graders addressed in this technical letter.

Clarification on Overtime Requirements:

- Campuses must evaluate overtime requirements for proctors, readers and graders on an employee-by-employee basis. Different rules apply depending on the following factors:
 - ✓ Is the employee's primary position represented or unrepresented?
 - ✓ What is the FLSA status for the work performed in each position?
 - ✓ Is the work performed as a proctor, reader or grader considered occasional or sporadic and is it substantially different from the employee's primary position?
- To assist campuses, two attachments are provided for reference when paying CSU employees through CSU payroll. Attachment A provides employment and overtime guidelines for a specific employee as well as a detailed explanation of the varying overtime rules for represented and unrepresented non-exempt employees. Attachment B provides examples of how overtime is calculated for employees in multiple positions.

Additional Employment Considerations:

- Outside employment for CSU employees hired as proctors, readers or graders by outside testing organizations does not count toward CSU's Additional Employment policy limitations.

- Important Note: The CSU's Additional Employment policy states, "if an employee holds a non-exempt position and an exempt position, the employee must be considered non-exempt for pay purposes." However, this statement does not apply if an exempt employee performs non-exempt work on an occasional or sporadic basis that is substantially different from the employee's primary position.

Staffing Considerations:

- Outside testing organizations can hire lower-division or graduate students, non-CSU employees, retired CSU employees or volunteers to perform proctor, reader or grader work. SB 41 restrictions do apply to Student Assistants and Graduate Assistants since they are student employees of the CSU.

Questions regarding employment-related aspects of this technical letter should be directed to systemwide Human Resources at (562) 951-4411. Questions regarding testing or ETS arrangements should be directed to Leon Washington in systemwide Academic Affairs at (562) 951-4726. This document is available on Human Resources Administration's Web site at: <http://www.calstate.edu/HRAdm/memos.shtml>.

CR/gc

Employment and Overtime Guidelines for Proctors

Employee's Primary Position/Classification	Additional Position for Proctoring Work (assumes work is substantially different than primary job)	Pay Basis for Proctoring Work	Is Proctoring Work Occasional or Sporadic?	Overtime Required for Hours Worked in Excess of 40?	Include Primary Position's Pay in Regular Rate of Pay Calculation for Proctoring Work?
Exempt – Represented Staff (e.g., Analyst/Prog- Career level, Student Service Professional II)	Non-Exempt (e.g., Casual Worker)	Per Hour	Yes	No	No
		Per Hour	No	Yes	Yes
Exempt –Represented Faculty	Non-Exempt (e.g., Casual Worker)	Per Hour	Yes	No	No
		Per Hour	No	No	No
Exempt –Unrepresented (e.g., , Confidential Admin Support – Level 2, MPP, Excluded classes)	Non-Exempt (e.g., Casual Worker)	Per Hour	Yes	No	No
		Per Hour	No	No	No
Non-Exempt – Represented Staff (e.g. Admin Support Asst, Analyst/Programmer – Foundation)	Non-Exempt (e.g., Casual Worker)	Per Hour	Yes	Yes	Yes
		Per Hour	No	Yes	Yes
Non-Exempt - Unrepresented (e.g. Confidential or Excluded classification)	Non-Exempt (e.g., Casual Worker)	Per Hour	Yes	No	No
		Per Hour	No	Yes	Yes

Employment and Overtime Guidelines for Readers/Graders

Employee's Primary Position/Classification	Additional Position for Reader/Grader ¹ (assumes work is substantially different than primary job)	Pay Basis for Reader/Grader Work ²	Is Reader/Grader Work Occasional or Sporadic?	Overtime Required for Hours Worked in Excess of 40?	Include Primary Position Pay in Regular Rate of Pay Calculation for Proctoring Work?
Exempt – Represented Staff (e.g., Analyst/Prog- Career level, Student Service Professional II)	Exempt (e.g., Special Consultant)	Per Day	Yes	No	No
		Per Day	No	No	No
Exempt –Represented Faculty	Exempt (e.g., Special Consultant)	Per Day	Yes	No	No
		Per Day	No	No	No
Exempt –Unrepresented (e.g., , Confidential Admin Support – Level 2, MPP, Excluded classes)	Exempt (e.g., Special Consultant)	Per Day	Yes	No	No
		Per Day	No	No	No
Non-Exempt – Represented Staff (e.g. Admin Support Asst, Analyst/Programmer – Foundation)	Exempt (e.g., Special Consultant)	Per Day	Yes	Yes	Yes
		Per Day	No	Yes	Yes
Non-Exempt - Unrepresented (e.g. Confidential or Excluded classification)	Exempt (e.g., Special Consultant)	Per Day	Yes	No	No
		Per Day	No	Yes	Yes

¹ Note that the Excluded Reader class (code 7172) is not appropriate for ETS readers.

² Exempt employees cannot be paid on an hourly or piece-rate basis.

Brief Summary on Overtime Requirements under FLSA and the Collective Bargaining Agreements³

Non-Exempt Unrepresented Employees

Under FLSA, non-exempt employees are to receive overtime for hours worked in excess of 40 in a workweek. The overtime rate is one and one-half of the employee's "regular rate of pay." In accordance with FLSA, overtime is not required to be paid for hours worked in excess of 40 in a workweek if the non-exempt employee receives an additional employment assignment that meets two criteria: 1) additional assignment is on an occasional or sporadic basis, and 2) additional assignment is substantially different from the current assignment.

Non-Exempt Represented Employees

Collective bargaining agreements (CBAs) provide overtime requirements in addition to FLSA. Specifically, staff CBAs require that the CSU pays non-exempt employees for hours worked in excess of 40 regardless if the work is occasional or sporadic or substantially different from the current assignment.

Exempt Unrepresented and Represented Employees

If an exempt employee performs non-exempt work (e.g., proctor) on an occasional or sporadic basis in an assignment that is substantially different from the current assignment, overtime is not required. It is anticipated that proctor, reader and grader work is performed on an occasional or sporadic basis in an additional assignment that is substantially different from the current assignment. Thus, there is no overtime requirement for exempt employees performing this work.

However, if an exempt represented employee holds an additional non-exempt position and that position is ongoing (i.e., does not meet the "occasional or sporadic" definition), the employee is considered non-exempt for pay purposes and should be paid overtime for any hours worked in excess of forty (40).

³ For detailed information on determining the regular rate of pay and calculating overtime, refer to HR/Salary 2003-03.

Overtime Calculation Examples

Example #1: A fulltime non-exempt CSEA employee proctors an exam for four hours within a workweek period. To pay the employee for proctoring the exam, the campus appoints the employee in a temporary (A52) hourly intermittent appointment (Item 310 = "H", Item 405 = "INT") in the Casual Worker classification (class code 1800) at the rate of \$15 per hour.

Step 1: Determine the "regular rate of pay":

Monthly base salary rate in fulltime CSEA position	= \$3935
Weekly rate equivalent for forty (40) hours	= \$ 908.08 (3935 x12/52)
Proctor pay for four (4) hours in one work week	= <u>\$ 60.00</u> (\$15 x 4 hours)
Add the intermittent pay to weekly rate equivalent	= \$ 968.08
<i>FLSA regular rate of pay</i>	= <i>\$22.00 (968.08/44 hours)</i>

Step 2: Determine overtime compensation

FLSA overtime premium formula	= [.5 x "regular rate" x # OT hours] = .5 x \$22.00 x 4 = \$44.00
Determine OT @ 4 hours	= regular rate x OT hours = \$22.00 x 4 = \$88.00 (of which \$60 is paid from posn #2)
<i>Total overtime premium</i>	= <i>\$132.00 (of which \$60 is paid from posn #2)</i>

Step 3: Determine regular rate OT rate = \$33.00 (\$22 x 1.5)

Step 4: Total compensation for the pay period (the employee receives three checks, all subject to taxation)

1. Monthly salary warrant position #1:	= \$ 3935
2. Posn #2 Pipped @ straight rate	= \$ 60
3. OT pay keyed from posn #1 via "OF6" ¹ :	= <u>\$ 72.27</u> (\$33.00 x 2.19 hours*) – see below
Actual pay period compensation	= \$ 4067.27
Actual OT pay is \$132 minus \$60	= \$72.00
Note that 72/33.00 (the OT rate)	= 2.18 hours, and 2.18 x \$33.00 = \$71.94
Which is less than what is minimally due	
So, must round up to	= 2.19 x 33.0 = \$72.27

¹ Earnings ID Code "OF6" is used when the hourly rate is manually calculated and entered on the PIP. The overtime factor for code OF6 is 1.5. Refer to Section G of the State Controller's Payroll Procedure Manual for additional information.

Overtime Calculation Examples

Example # 2: A non-exempt employee is regularly scheduled to work 30 hours each week (timebase is .75). In addition, the employee proctors two exams within one work week period for three hours each exam, and then proctors a four-hour exam for two consecutive weeks within the pay period. Proctor pay is \$15.00 per hour.

Work week 1 - Total Hours in both positions = 40 (30 +3+3+4)

Work week 2 - Total Hours in both positions = 34 (30 +4)

In this instance, no overtime compensation is due. The campus should appoint the employee in the Casual Worker classification (class 1800) as an hourly intermittent, and process payment for 14 hours at the rate of \$15 per hour at the end of the pay period in which the proctor work was performed.

If, however, in a given workweek period, the employee worked more than his/her regularly scheduled hours, and when combined with the number of hours he/she proctored within the work week, the total hours exceeded 40, the campus would have to apply the formula used in Example #1 above to calculate the regular rate of pay for all hours worked in excess of forty.

Example # 3: A fulltime exempt employee agrees to proctor two exams within a given work week for a total of eight hours. Proctor pay is \$15.00 per hour.

In this instance, no overtime compensation is due because the employee is exempt (PIMS Item 355 (FLSA) = "E") and the non-exempt work performed is considered "occasional or sporadic" and is significantly different than the employee's primary position. The campus should appoint the employee in the Casual Worker classification (class 1800) as an hourly intermittent, and process payment for 8 hours at the rate of \$15 per hour at the end of the pay period in which the proctor work was performed.
