

Volunteers and Compensation Standard Operating Procedure August 2, 2016

Those consulted: Kevin Kesler and representatives from the state 4-H office and select county faculty (4-H); Bryan Arnell, Branden Blanchard and Carol Ann Downs (Business Services); Dan Christensen and Wendy Keller (Controller's Office); Michelle Bair (Accounts Payable), Jodi Morgan and Mickelle Andersen (Human Resources); Ken White and Brian Higginbotham (Extension Administration); Mica McKinney and Ryan Brady (Office of General Counsel).

History: In the past, USU has allowed "nominal" stipends to incentivize volunteers. This practice has recently been flagged and questioned by several internal and external parties.

Considerations: In evaluating the payment of stipends to volunteers, several factors were considered, including how USU and the volunteer classify the stipend payment for tax purposes and whether paying a stipend creates confusion regarding the status of the individual as a volunteer for both payroll and liability purposes.

First, when USU Accounts Payable pays recipients a "stipend", they are coded for tax purposes as "independent contractors." USU then issues a tax form 1099 and the recipient of the stipend is required to file a Schedule C during tax time. This presents several concerns. Is the recipient of the stipend (some are which are minors) treating this as taxable income and reporting for tax purposes? Faculty and staff refer to these recipients as volunteers and tell them they are getting a stipend or gift but USU Accounts Payable classifies the recipients as independent contractors and treats the stipend as a payment. Thus, the volunteer may be under the assumption that they don't have to pay taxes, but the payments are in fact taxable income.

Second, some recipients are being told up front that they will be paid if they complete certain assignments/tasks. This creates an expectation that individuals will receive something in return for performing such tasks, which undermines their classification as volunteers and may create a dispute over the appropriate payment for performing certain tasks. Additionally, paying an individual a stipend for performing certain tasks may prevent the university from treating the individual as a volunteer (as opposed to an independent contractor) under the university's risk policy and may prevent the university and the individual from asserting government immunity for the acts or omissions of that individual. All these concerns are also applicable to "in-kind" incentives (e.g., 4-H bucks, travel credits, vouchers, gifts, etc.)

Who is a volunteer: According to the US Department of Labor, volunteers are individuals who perform hours of service for religious, charitable or similar non-profit organizations **without promise, expectation, or receipt of compensation.** In addition, all of the following must also be true: The entity that benefits from the service is a nonprofit (or government agency). The activity is less than full time. The services are not offered as a result of coercion. The services are typically associated with volunteer work. No regular employees have been displaced by the volunteer. **The volunteer does not expect to be compensated.**

Under Utah law, volunteers for government entities are afforded immunity from liability pursuant to Utah Code section 67-20-1. et seq.. This statute defines volunteers as follows:

(3)(a) “Volunteer” means a person who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising agency.

See Utah Code Ann. § 67-20-2.

USU’s Liability Policy from State Risk Management limits coverage to employees and individuals who qualify as a volunteer under Utah Code sections 67-20-2 and -3. Because the Utah statute defines volunteers as persons who donate service without pay or any compensation, volunteers who are paid a stipend may not qualify for risk coverage under USU’s standard policy.

Conclusion: Volunteers can still be used and are encouraged to participate in Extension programming. Their participation must be **without promise, expectation, or receipt of compensation** of any kind. This includes but is not limited to cash payments, payroll expenses, 4-H bucks, registration credit, travel vouchers, etc.

To protect the University and the volunteer, compensation to volunteers will not be allowed.

Volunteers can still be reimbursed for bona fide business expenses. A detailed receipt should be turned into a USU employee and processed through EZ Buy.

If faculty and staff determine help is needed to complete a project, each individual that is to receive payment should go through the hiring process. They will no longer be a volunteer and will be paid as a USU employee. The following steps should be followed:

- Post a position – work with Business Services
- Each potential candidate must apply for the position
- Each candidate must be 14 years old or older*
- Minimum wage requirements must be adhered to
- All hiring paperwork must be completed and turned in before work begins – no exceptions
- Hours worked must be tracked and submitted through the standard payroll process

We realize these procedures may require additional time and resources beyond what has been accounted for in your current grant budgets. We suggest that you review your grant budgets and if necessary work with Sponsored Programs to reallocate budgets to cover the additional wages and benefits. In the future, if you decide you need individuals who expect payment for their time, you will need to write into your grants the amount needed to hire them as employees.

These changes will allow projects and programs to continue while protecting the University, employees and volunteers. Thank you for your diligence in implementing these procedures.

* There are restrictions on what 14 and 15-year-old youth can do and the type of equipment they are allowed to use. Anyone hiring someone that young will need to understand the rules and not violate any of them. Check with Human Resources regarding USU’s interpretation of DOL rules. See also [http://laborcommission.utah.gov/media/pdfs/uaid/pubs/LC%20wageClaimUnit%20\(employment%20of%20minors\)OnLine%20\(1\).pdf](http://laborcommission.utah.gov/media/pdfs/uaid/pubs/LC%20wageClaimUnit%20(employment%20of%20minors)OnLine%20(1).pdf) and <http://www.youthrules.gov/know-the-limits/14-15.htm>