

## TEXAS A&M RESEARCH FOUNDATION

### Determination of Independent Contractor Status As Required by the Internal Revenue Service

#### Background

If persons are to be paid with project funds for services rendered, it is important to determine the employment status of such persons; i.e., whether they should be classified as employees or independent contractors. Occasionally some individuals may be associated with the project and receive project funds in the form of stipends or fellowships.

The purpose of this checklist is to assist in determining the proper status of such persons. Please be aware that sometimes there may not be a definitive answer and the exercise of some judgment will be required to determine the proper status.

The determination process begins with a presumption that a person providing services to a project is to be classified as an employee of The Texas A&M University System Component associated with the project. This presumption may be overcome based upon an analysis of the elements discussed below.

*“When in doubt, employment status wins out.”*

#### Employment vs. Independent Contractor

The general rule, defined by the Internal Revenue Service, is that an individual is an independent contractor if the person for whom the work is being performed has the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

If the person for whom the work is being done has the right to control the details of what will be done and how it will be done, then the person providing the services will generally be considered an employee. What matters in making the proper classification is the degree of control or independence. This concept is also described as the degree of supervision, control, and direction that is given to the person providing the services. Even if no detailed instructions are actually or continuously given to the person, sufficient behavioral control may exist if the person for whom the services are being performed *has the right* to control the details of a worker's performance of how the work results are to be achieved. Indicators of the degree of control and independence are discussed below.

*Instruction, Direction, and Control.* The following are examples of the types of instructions or directions about how to do the job that bear upon whether a person is an employee:

- When, where, and how long to work
- What tools or equipment to use, and providing same
- What workers to hire or to assist with the work and how such assistants are to be paid and the amount they are to be paid
- Where to purchase or acquire supplies and services
- What work must be performed by a specified individual
- What order or sequence to follow
- Whether additional tasks can be assigned to the individual

*Compensation.* An employee is usually guaranteed a regular wage or payment on an hourly, weekly, or other periodic basis. An independent contractor is usually paid a flat fee for the job (or fee plus expenses). In some professions (law, accounting, engineering, etc.), however, it may be customary to pay an independent contractor hourly. If the person for whom the services are being provided can, on a discretionary basis, increase or decrease the rate of pay of the worker during the course of the work to be performed, this will generally indicate an employer-employee relationship. Independent contractors are not provided with employee-type benefits such as health insurance, vacation pay, sick pay, pensions, etc. Related to this concept is the amount of the worker's time that is being devoted to the project and the worker's ability to concurrently offer his or her services to third parties.