Background:

The Internal Revenue Service (IRS) has issued a regulation on the “Shared Responsibility for Employers Regarding Health Coverage”, which requires specific employers to offer health care benefits to employees who work thirty (30) hours or more per week, on average, over a twelve (12) month period. This regulation is part of the Federal Affordable Care Act (ACA), which requires employers to ensure that health care benefits have been offered to employees working thirty (30) hours or more per week, on average, over a twelve (12) month period.

On February 4, 2013, the Governor of Virginia’s Chief of Staff instructed all executive branch agencies, including Virginia Commonwealth University (VCU), to begin limiting the number of hours worked by wage and hourly employees to no more than twenty-nine (29) hours, on average, per week, or less.

In addition, the Commonwealth of Virginia’s budget (section of the Manpower Control Program) was amended on April 3, 2013 to include language specifically on how the Commonwealth will ensure compliance with the ACA as it applies to limiting the hours worked by an adjunct faculty in institutions of higher education. The amendment language states as follows: *Adjunct faculty at institutions of higher education may not (a) work more than 29 hours per week on average over a twelve month period, including classroom or other instructional time plus additional hours determined by the institution as necessary to perform the adjunct faculty’s duties; or (b) meet or exceed, on average over a twelve month period, 75% of the course load for a full-time non-tenure track teaching faculty member at that institution.*

The State’s Department of Human Resource Management (DHRM) developed guidelines for state agencies on complying with the provisions of the Manpower Control Program as it relates to the twenty nine (29) hour restrictions. Guidance includes information on wage, variable, and seasonal employment, as well as adjunct faculty appointments. DHRM consulted with VCU and other institutions of higher education to develop a methodology for calculating hours worked by adjunct faculty. As part of this discussion, it was determined that each institution of higher education is considered its own “employer” and could develop their own methodology for calculating hours worked by adjunct faculty. In addition, the State has indicated that the Standard Measurement Period for employees is May 1 through April 30 of the following year. This means that between May 1 through April 30, employees in an adjunct appointment(s) may not work more than 29 hours per week on average during this measurement period. The State has also indicated the initial measurement period, called the “look back” period, will be from May 1, 2013 through April 30, 2014. The recommendations provided below are based on DHRMs guidance as well as that provided by VCU’s General Counsel’s Office.

Based on laws and guidance provided above, below are the procedures to be followed at VCU before offering an adjunct appointment. These procedures apply to both instructional (credit and non-credit) and non-instructional adjunct faculty appointments.
Key Definitions:

VCU’s Definitions of Adjunct and Non Tenure-Track Faculty (from VCU’s Faculty Handbook)

Adjunct Faculty: Adjunct faculty appointments are granted to faculty who serve the University part-time and are employed for specific activities and do not lead to tenure. (Note: Adjunct faculty are temporary appointments for up to one year, but may be renewed.)

Term Faculty: Term faculty appointments are generally full-time appointment for a specified term and do not lead to tenure.

Calculation of Hours Worked:

Using the applicable legislative language noted above, (e.g. “meet or exceed, on average over a twelve month period, 75% of the course load for a full-time non-tenure track teaching faculty member at that institution”), the course load of a 9-month, full-time (100% FTE) term (non-tenured) faculty appointment was used as a baseline to determine how credit hours taught are to be converted to a full-time equivalency (FTE%).

Below is a common course load composition for a 9-month, full-time term faculty appointment with primary instructional duties. This course load includes classroom and other instructional time plus additional hours determined as necessary to perform the faculty member’s duties:

- Teaching twenty four (24) credit hours (Fall and Spring) which would equate to a total of twelve (12) credit hours in each of the Fall and Spring semesters; or
- Teaching thirty-three (33) credit hours over the course of a twelve (12) month period, which would equate to a total of twenty-four (24) credit hours [twelve (12) credit hours in each of the Fall and Spring semesters] and up to nine (9) credit hours in the Summer.

Adjuncts with Instructional Duties Only (Credit and Non-Credit):

The chart below shows 75% of the general course load for a 9-month, full-time term faculty appointment with primary instructional duties based on the work load composition as shown above.

<table>
<thead>
<tr>
<th></th>
<th>Fall and Spring</th>
<th>Summer Only</th>
<th>Fall, Spring and Summer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Credit Hours – Full-Time, 9-Month Term</td>
<td>24</td>
<td>9</td>
<td>33</td>
</tr>
<tr>
<td>Maximum Credit Hours- Adjunct (75% of course load of Full-Time, 9-Month Term)</td>
<td>18</td>
<td>6</td>
<td>24</td>
</tr>
</tbody>
</table>

Accordingly, if an adjunct is teaching in the Fall and Spring, they would only be allowed to teach up to eighteen (18) credit hours, which equates to no more than nine (9) credit hours per semester. Additionally, if the adjunct is teaching in the Fall, Spring, and Summer, they would only be allowed to teach up to twenty-four (24) credit hours, which equates to no more than nine (9) credit hours in each of the Fall and Spring semesters and up to six (6) credit hours in the Summer. The credit
hours adjunct faculty teach during intersession will be counted towards the twenty four (24) hour credit limit.

Before an adjunct contract or “overload” for a teaching adjunct appointment can be issued, schools/units are responsible for finding out from the prospective adjunct faculty if they have or have had any other adjunct or hourly appointment(s) at VCU during the “Standard Measurement Period” (from May 1st to April 30th of the following year). Schools/units are also responsible for checking to see if the prospective adjunct faculty has had any other adjunct or hourly appointment(s) at VCU by using the “Management of 29 Hours” and the “Management of 29 Hours – Individual Audit” reports in VCU’s Reporting Center.

In order to ensure adjunct faculty appointments will not exceed the maximum allowable credit hours (as shown in the chart above) during the “Standard Measurement Period”, the FTE% for each adjunct faculty appointment will be used to track all adjunct hours worked. To assist schools/units in making sure hours worked are in compliance with the Manpower Control Act, HR has developed an Adjunct FTE% calculator (separate tab on the PAF) on the Personnel Action Form, which will determine the total hours worked based on the credit hours taught. See the Adjunct PAF instructions on how to fill out the Adjunct FTE% calculator.

Adjuncts Without Any Instructional Duties (i.e. primary administrative duties):

Using the applicable legislative language noted above, (e.g. “Adjunct faculty at institutions of higher education may not (a) work more than 29 hours per week on average over a twelve month period”), adjunct faculty who do not have instructional duties (non-teaching adjuncts) must be restricted to working no more than twenty nine (29) hours per week, which is no more than 72.5% FTE. The PAF, Overload, and Adjunct Non-Teaching PD forms include additional required fields in order to input the FTE% based on the hours worked per week. The FTE% on contracts for non-instructional adjunct appointments should match the FTE% on the corresponding personnel action.

Before an adjunct contract or “overload” for a non-teaching adjunct appointment is issued, schools/units are responsible for finding out from the prospective adjunct faculty if they have or have had any other adjunct or hourly appointment(s) at VCU during the “Standard Measurement Period” (from May 1st to April 30th of the following year). Schools/units are also responsible for checking to see if the prospective adjunct faculty has had any other adjunct or hourly appointment(s) at VCU by using the “Management of 29 Hours” and the “Management of 29 Hours – Individual Audit” reports in VCU’s Reporting Center. If a non-teaching adjunct faculty member has more than one non-teaching adjunct or hourly (non-benefited) position at VCU, the same hourly restriction applies. In other words, the total hours worked during the “Standard Measurement Period” for all non-benefited positions (e.g. adjunct and hourly) cannot exceed more than twenty nine (29) hours per week on average over a twelve (12) month period (e.g. no more than 72.5% FTE).

Adjuncts Who Have Responsibilities with a Combination of Instruction and Other Non-Instructional Duties:

If an adjunct faculty has a combination of instructional (credit and non-credit) and non-instructional duties, it is up to the hiring school/unit to ensure the combined workload (credit hours plus hours worked per week) does not exceed, on average, 72.5% FTE over the course of the “Standard Measurement Period” (see below regarding the recommendations on the monitoring of...
hours worked). In order to facilitate the counting of hours worked per week, a separate contract should be issued for each of the functions (e.g. one for teaching duties and one for administrative duties) along with the corresponding PAFs.

Before an adjunct contract or “overload” for a teaching or non-teaching adjunct appointment can be issued, schools/units are responsible for finding out from the prospective adjunct faculty if they have or have had any other adjunct or hourly appointment(s) at VCU during the “Standard Measurement Period” (from May 1st to April 30th of the following year). Schools/units are also responsible for checking to see if the prospective adjunct faculty has had any other adjunct or hourly appointment(s) at VCU by using the “Management of 29 Hours” and the “Management of 29 Hours – Individual Audit” reports in VCU’s Reporting Center.

Contract Issuance/Renewals for Adjunct Faculty:

The Adjunct Faculty Terms and Conditions document has been revised to include language regarding compliance with the Manpower Control Act and which holds the employee responsible for complying with the credit hours and/or work hour restrictions. The adjunct faculty contract templates have also been revised for all types of adjunct appointments which includes language about the employee’s responsibility for understanding and complying with the credit hours and/or work hour restrictions under the Manpower Control Act.

Recording of FTE% and Hours Worked on Personnel Actions:

Each school/unit is responsible for ensuring that when adjunct faculty are appointed (either in a new or continuing appointment), the Personnel Action Form, ePAF, Adjunct Faculty Non-teaching Position Description, and/or Overload Job Request forms submitted in the HR Banner system has the correct FTE% (based on credit hours and/or hours worked per week using the applicable FTE% calculator) for each adjunct position. The FTE% on contracts for non-instructional adjunct appointments should match the FTE% on the corresponding personnel action.

HR has developed an Adjunct FTE% calculator (separate tab on the PAF) on the Personnel Action Form, which will determine the total hours worked based on the credit hours taught or hours worked per week. See the Adjunct PAF instructions on how to fill out the Adjunct FTE% calculator. The FTE% represents the number of hours per week the adjunct employee is working for that particular appointment. If an adjunct faculty holds more than one appointment (adjunct or hourly) at the same time, the FTE% for each appointment needs to be combined to reflect the total hours worked per week. The total FTE% cannot exceed the credit hour and/or work hour restrictions (described above) during the “Standard Measurement Period”.

Faculty Under a Current Adjunct Contract(s):

Based on recent guidance from DHRM and the Attorney General’s Office, any existing adjunct contract will remain in place and unchanged until the designated end date on the contract. Adjunct contracts can be renegotiated, but only by agreement by both the employee and school/unit.
Additionally, if a school/unit determines the work load/course load of an adjunct faculty appointment is more than a 75% commitment, the position will need to either be (1) split into more than one adjunct position or (2) funding will need to be secured to convert the current adjunct position to a position with benefits (e.g. term appointment). If the latter, a national search for the position would be required. The VP of the respective school/unit may grant permission to “waive” the search for up to one year and move the current adjunct into the term position (with benefits).

**Employees with Primary Faculty Appointments Who Have an Overload Adjunct or Hourly Appointment(s) (i.e. Secondary Job):**

The twenty-nine (29)-hour limit does not apply to full time faculty or part-time faculty who are eligible for benefits under the health care plan established by DHRM. Likewise, if a full time faculty member has a secondary appointment processed as an adjunct or hourly overload, the 29-hour restriction does not apply to the secondary job(s).

**Responsibility for Compliance with the Manpower Control Act:**

- Adjunct faculty are responsible for complying with the credit hour and/or work hour restrictions under these procedures and under the Manpower Control Act. They must disclose any non-benefited (e.g. adjunct or hourly) position they hold or have held at VCU during the “Standard Measurement Period” before accepting any other adjunct appointment.
- Before an adjunct contract or “overload” for a teaching or non-teaching adjunct appointment is issued, schools/units are responsible for finding out from the prospective adjunct faculty if they have or have had any other adjunct or hourly appointment(s) at VCU during the “Standard Measurement Period”.
- Schools/units are also responsible for checking to see if the prospective adjunct faculty has had any other adjunct or hourly appointment(s) at VCU by using the “Management of 29 Hours” and the “Management of 29 Hours – Individual Audit” reports in VCU’s Reporting Center.
- HR and OFRR have assisted schools/units in developing or revising forms, processes, and/or reports to facilitate compliance. Some of these tools include the following:
  - Adding additional required reporting fields to the PAF (also includes a FTE% calculator), ePAF, Overload, and Adjunct (non-teaching) Position Description forms for adjunct faculty appointments.
  - The reports found in VCU’s Reporting Center will also help schools/units to make sure their adjunct faculty are in compliance with the credit/work hour restrictions during the “Standard Measurement Period” of May 1st to April 30th of the following year.
  - If an adjunct faculty is approaching their work/credit hour limit, schools/units will be notified by HR. To check the status of adjunct faculty and their hours worked, schools/units can check the “29 Hour Rule Violations” report in VCU’s Reporting Center.

**Questions:**

For questions regarding preparing adjunct faculty contracts and assistance with calculating FTE%, contact Shannon Foley, HR Program Coordinator in the OFRR at foleysm@vcu.edu or at 828-6844.