

Procedural Guide for Independent Contractors and Limited Engagements

Purpose

The purpose of this guide is to provide faculty and staff with a step-by-step process for reviewing, engaging, and paying independent contractors and limited engagement service providers to ensure compliance with federal, state, and local regulations. The guide is divided into four sections.

Definitions – provides a breakdown of the various types of payments and terms utilized within the guide.

Forms - provides a detailed listing of the various forms that are used when engaging and paying an independent contractor or limited engagement service provider.

Process - provides a step-by-step process to follow when a situation arises that potentially requires the use of an independent contractor or limited engagement service provider.

FAQs – provides answers to common questions that arise when dealing with an independent contractor or limited engagement service provider.

Definitions

Hiring Manager: For the purposes of this policy, the ‘hiring manager’ is the individual responsible for the hiring of an individual service provider, or temporary employee, or for procuring services of an independent contractor.

Human Subject Fee: A Human Subject Fee is a payment that represents remuneration and/or reimbursement to individuals participating as subjects in a research project. ([See Policy #2319.1 - Payment of Human Subject Fees](#))

Related Object Codes:

5316: Human Subject Payments-Direct; 5317: Human Subject Payments-Advance to P.I.

Honorarium: An Honorarium payment is a gratuitous payment of money or other thing of value to a person for the person’s participation in a usual academic activity for which no fee is legally required. Honorarium payments are provided as a token of appreciation for participation in an activity or event, and not as a contractual obligation to pay for services rendered. ([See Policy #2319.2 – Payments Made for Honoraria](#))

Related Object Code:

5314: Honorarium

Usual Academic Activity: Usual Academic Activity is activity conducted for the benefit of the honorarium-paying institution and includes lecturing, teaching, consulting, conducting research, attending meetings, symposia or seminars, or otherwise sharing knowledge. Readings and performances are considered academic activities, so long as the activity is open without charge to the public and/or students.

Limited Engagement Fee: A Limited Engagement Fee is a payment to a non-employee which represents compensation (fee charged by the person) for services for which a one-time speech, guest lecture, or performance is given by a visitor in front of a class or an audience. ([See Policy #2319.3 – Payments Made for Limited Engagements](#))

Related Object Code:

5313: Lecture Fee

Independent Contractor Services: Independent Contractor services are services provided by an individual doing business with the University as a supplier of general goods or services, such as consulting services. The University has the right to specify the results to be accomplished but not the means and methods by which those results are to be accomplished. Independent contractors typically supply their own workplace, are not supervised, have control over their work schedule, have a set of skills not found elsewhere within the University, and provide the same or similar services to the general public as part of a continuing trade or business. These individuals are not eligible for employee benefits and are not covered under the University's workers compensation program. The University does not withhold income tax. ([See Policy #2319.4 – Procurement and Reporting of Independent Contractors](#))

Related Object Codes:

5300: Accounting & Audit Services; 5301: Legal Services; 5302: Management Consulting Services; 5303: External Training & Staff Development; 5306: External Computer Consulting Services; 5308: External Computing Infrastructure/Usage Costs; 5319 External Other Professional Services

Employee/Employer Relationship: This determination is central to the question of how an individual should be paid for services provided to the University. Individuals who are currently employees of the University or individuals who have been employees of the University would, in most cases, be compensated through the University's payroll system. Individuals, who are independent contractors, as determined by the hiring manager in concert with their Human Resources representative, should be processed in accordance to [Policy #2319.4](#) as noted above.

Temporary Worker: A temporary worker is an individual who is hired to augment staff for a predetermined specific period of time. To determine whether the temporary employee should be placed on Penn's HR/Payroll System or hired through a third-party vendor, contact your Human Resource representative. Temporary workers may be eligible for some benefits, including medical coverage and paid sick time.

Nonresident Alien: A non-U.S. citizen who doesn't pass the green card test or the substantial presence test. If a person does not meet either the [Green Card](#) or [Substantial Presence Test](#), that person is classified as a nonresident alien.

- A new arrival on a J-1 or F-1 visa is generally a non-resident alien.
- Generally, students (F-1 or J-1 visa status) will not meet the substantial presence test until they have been in the U.S. for 5 calendar years. Visiting teachers/researchers (J-1 visa status) will not meet the substantial presence test until they have been in the U.S. for two (2) calendar years.

Resident Alien: A foreigner who is a permanent resident of the country in which he or she resides but does not have citizenship. To fall under this classification in the U.S., a person needs to either currently have a Green Card or have had one in the last calendar year.

- Resident aliens generally are taxed on their worldwide income, similar to U.S. citizens.
- To be classified as a resident alien, the individual must meet one of two tests:
 - [Green Card Test](#): A nonresident alien is a lawful permanent resident of the U.S. at any time if he/she has been given the privilege, according to the immigration laws, of residing permanently as an immigrant. This status usually exists if the Bureau of Citizenship and Immigration Services has issued a green card.
 - [Substantial Presence Test](#): A nonresident alien is classified as a resident alien for tax purposes if he/she was physically present in the U.S. for 31 days during the current year and 183 days during a 3-year period that includes the current year and the 2 years immediately before that.

Human Resources (HR): For this policy, HR refers to the Schools/Centers HR director/staff. For those Schools/Centers without HR director/staff positions, refer to their Business Office.

Forms

Below are links to and descriptions of the forms used to review and process payments to independent contractors and limited engagement service providers. The Process section reviews when each form should be used.

[Service Provider Questionnaire](#)

Prior to formally engaging an individual, the hiring manager sends this form to individual/supplier/vendor for completion.

The purpose of this form is to gather information from an individual **prior to** engaging him/her to assist in determining whether their relationship with the University is one of independent contractor/client or employee/employer. This form should not be used with Limited Engagements. An individual should not be engaged until this form is completed and a classification determination is made using the Service Provider Evaluation Worksheet. A new Service Provider Questionnaire needs to be completed for each project/contract.

[Service Provider Evaluation Worksheet](#)

Hiring manager (or his/her assignee) completes and sends to HR

The purpose of this form is to assist hiring departments in collaboration with Human Resources in the evaluation of an individual's relationship with the University. This form should be completed by the hiring department based on the information provided in the Service Provider Questionnaire, along with any other relevant information they have concerning the project. Human Resources is responsible for making the final classification determination. A new Service Provider Evaluation Worksheet needs to be completed for each project/contract.

[Limited Engagement Agreement \(U.S. Citizens\)](#)

Prior to formally engaging the individual, the hiring manager/department completes this form and includes it with the PDA form when it is sent to Accounts Payable.

The purpose of this form is to formally document the relationship between the University and a U.S. citizen providing a one-time or one-time per calendar year speech, guest lecture, or performance. This form should be completed **prior to** engaging an individual to provide services to the University. A new Limited Engagement Agreement (U.S. Citizen) needs to be completed for each engagement. If engagements become more frequent, the relationship needs to be reviewed by Human Resources to determine whether a different classification is more appropriate.

[Limited Engagement Agreement \(Nonresident Aliens\)](#)

Prior to formally engaging the individual, the hiring manager/department completes this form, and includes it with the PDA form when it is sent to Accounts Payable.

The purpose of this form is to formally document the relationship between the University and a nonresident alien providing a one-time or one-time per calendar year speech, guest lecture, or performance. This form should be completed **prior to** engaging an individual to provide services to the University. A new Limited Engagement Agreement (Nonresident Aliens) needs to be completed for each engagement. If engagements

become more frequent, the relationship needs to be reviewed by Human Resources to determine whether a different classification is more appropriate.

Process

Outlined below are the procedures that should be followed when a situation arises that requires the potential use of an independent contractor or limited engagement service provider. The first sub-section details the process for independent contractor situations. The second sub-section details the process for limited engagements.

Worker Classification Process

1. Need for service is identified.
2. Hiring office requests the potential independent contractor to complete:
 - a. [Service Provider Questionnaire](#).
 - b. [W-9 Form](#) for U.S. citizens/Resident Aliens or a [W-8BEN Form](#), copies of Visa (if applicable), [Foreign National Information Form](#), Passport Biographic Page, U.S. Entry Stamp in passport for nonresident aliens, [Certification of Foreign Source Income](#) (if applicable).
 - c. Please note: If an independent contractor is a nonresident alien, there may be restrictions to the work he/she can perform for the University based on his/her visa status. Please contact the office of [Tax and International Operations](#) prior to engaging a nonresident alien as an independent contractor to understand the limitations of his/her visa status and the additional paperwork required for processing payment. Global Support Services also has put together a helpful guide on [Payments and Reimbursements to Foreign Non-Affiliates](#) that will assist you in this area.
 - d. If the activity/service takes place outside of the United States, there are additional considerations. Global Support Services has developed a [Hiring Abroad Toolkit](#) to determine if the individual can be engaged as an independent contractor or whether a PEO (Professional Employment Organization) should be utilized. A sample independent contractor service template for foreign services is included in the [Hiring Abroad Toolkit](#).
 - e. If an independent contractor submits a contract he or she has created, this agreement should be forwarded with the remainder of the paperwork through the process. [Purchasing Services is responsible for reviewing and signing all Personal/Professional Service Agreements on behalf of the University.](#)
3. Using the completed Service Provider Questionnaire and what they know about the project, the hiring department completes the [Service Provider Evaluation Worksheet](#).

- a. If the determination is made that the individual should be engaged as an independent contractor, the hiring department forwards the Service Provider Questionnaire and Service Provider Evaluation Form along with the hiring manager's description of services to be provided to Human Resources for determination.
 - b. If the determination is made that the individual should be engaged as an employee, the hiring department should continue to work with Human Resources to complete the hiring process. Note: If the individual is hired as an employee but is not located near main campus, the University has a reciprocal agreement with various institutions across the country to verify the I9 on behalf of the University. You can find the nearest location to the employee by going to <http://www.cupahr.org/i9/> or contacting your Human Resources representative.
4. Human Resources reviews the completed Service Provider Questionnaire, Service Provider Evaluation Form, hiring manager's description of services, and any other relevant documentation provided by the potential independent contractor to determine the correct classification status for the individual. Human Resources is responsible for making the final classification determination.
 - a. If the determination is made that the individual should be engaged as an independent contractor, the paperwork is returned to the hiring department for independent contractor processing.
 - b. If the determination is made that the individual should be engaged as an employee, the hiring department continues to work with Human Resources to complete the hiring process. Note: If the individual is hired as an employee but is not located near main campus, the University has a reciprocal agreement with various institutions across the country to verify the I9 on behalf of the University. You can find the nearest location to the employee by going to <http://www.cupahr.org/i9/> or contacting your Human Resources representative.
5. If the individual being engaged as an independent contractor is a nonresident alien, the Service Provider Questionnaire, Service Provider Evaluation Form, and W-8BEN Form (along with any applicable additional paperwork for nonresident aliens) must be forwarded to the Victor Adams in the Tax Office via Secure Share at adamsv@upenn.edu using Secure Share) for review and approval. The email subject line should use the following format: "IC Onboarding – Last Name, First Name."

The Tax Office reviews the documentation and completes a NRA Treatment Form to verify that the nonresident alien can be paid for the services and confirms their tax treaty status. The Tax Office returns the paperwork to the hiring department.

- a. If it is determined that the nonresident alien **is not eligible to receive compensation** for the described services based on his/her visa status, the hiring department informs the nonresident alien and engages a different independent contractor to perform the services.

- b. If it is determined that the nonresident alien **is eligible to receive compensation** for the described services and **is tax treaty eligible**, the hiring department continues to Step # 6 below.
 - c. If it is determined that the nonresident alien **is eligible to receive compensation** for the described services and **is not tax treaty eligible**,
 - i. The hiring department consults with Purchasing Services (sourcing@exchange.upenn.edu) to put together a contract between the independent contractor and the University. Purchasing Services is responsible for reviewing and signing all Personal/Professional Service Agreements on behalf of the University.
 - ii. Once the contract is executed by the independent contractor and Purchasing Services, the individual can be engaged to begin providing services.
 - iii. After completion of the project (or at the intervals agreed upon in the contract), the independent contractor sends an invoice to the hiring department.
 - iv. The hiring department processes the payment through Accounts Payable via a PDA-F form. The NRA Treatment Form, invoice, Service Provider Questionnaire, Service Provider Evaluation Form, and W-8BEN Form (and any applicable related documentation) should be included with the payment request.
6. The hiring department submits the completed Service Provider Questionnaire, Service Provider Evaluation Form, and W-9 Form/W-8BEN Form (along with any applicable additional paperwork for nonresident aliens) to Vira Homick and Debbie Schmidt at homickv@upenn.edu and debbies@upenn.edu via Secure Share. Email subject line should use the following format: "IC Onboarding – Last Name, First Name."
 7. Purchasing Services sends the independent contractor the Independent Contractor Registration Form to collect the information needed to onboard them as a new supplier.
 8. Once the Independent Contractor Registration Form has been completed and returned by the independent contractor. Purchasing Services:
 - a. Performs vendor due diligence.
 - b. Determines whether an additional contract is necessary beyond the standard purchase order agreement. If an additional contract is deemed necessary, Purchasing Services will reach out to the hiring department with the applicable agreement for the situation. Purchasing Services has contract templates available that are structured for various types of engagements that can be uploaded as part of the PO process. Purchasing Services is responsible for reviewing and signing all Personal/Professional Service Agreements on behalf of the University.
 - c. Establishes the independent contractor in the vendor database and notifies the hiring department via email.

9. The hiring department initiates the purchase order process and engages the independent contractor for services.
10. After completion of the project (or at the intervals agreed upon in the contract), the independent contractor sends an invoice directly to Accounts Payable referencing the PO number to receive payment. Invoices can be mailed to the address below or emailed to appoinv@exchange.upenn.edu after a [Penn Vendor Invoice Emailing Agreement](#) is completed.

Accounts Payable
4th Floor Franklin Building – Room 440
3451 Walnut Street
Philadelphia, PA 19104

11. If an independent contractor is engaged who has already been set up as a vendor by Purchasing Services, the above process should still be followed except after determination by Human Resources, the hiring department does not need to forward the paperwork to Purchasing Services and can instead directly proceed with creating a purchase order. Each engagement needs to be evaluated individually to ensure the relationship between the individual and the University is being properly classified.

Limited Engagement Process

1. The need for a one-time discourse, lecture, or presentation is identified.
2. The hiring department works with the limited engagement service provider to complete:
 - a. [Limited Engagement Agreement \(U.S. Citizens\)](#) or [Limited Engagement Agreement \(Nonresident Aliens\)](#). These agreements can be signed by the respective hiring manager on behalf of the University. A new Limited Engagement Agreement (U.S. Citizen) or Limited Engagement Agreement (Nonresident Aliens – Within the U.S.) needs to be completed for each engagement. If engagements become more frequent, the relationship needs to be reviewed by Human Resources to determine whether a different classification is more appropriate.
 - b. [W-9 Form](#) for U.S. citizens/Resident Aliens or a [W-8BEN Form](#), copies of Visa (if applicable), Passport Biographic Page, U.S. Entry Stamp in Passport for Nonresident Aliens.
 - c. Please note: If an individual being engaged on a limited basis is a nonresident alien there may be restrictions to the work he/she can perform in the U.S. for the University based on his/her visa status. Please contact the office of [Tax and International Operations](#) prior to engaging a Nonresident Alien to understand the limitations of his/her visa status and the additional paperwork required for processing payment. Global Support Services also has

put together a helpful guide on [Payments and Reimbursements to Foreign Non-Affiliates](#) that will assist you in this area.

- d. If the limited engagement service takes place outside of the United States, please have the individual complete a W-8BEN and a [Certification of Foreign Source Income](#).
3. After completion of the limited engagement, the individual sends an invoice to the hiring department.
4. The hiring department processes the payment through Accounts Payable via PDA form. The Limited Engagement Agreement, the invoice, W-9 Form or W-8BEN Form (and any applicable related documentation), and, if available, a copy of the event flyer or invitation should be included with the payment request.

FAQs

Q. Can we pay for travel expenses?

A. Yes, in cases where the independent contractor (or guest lecturer/speaker) will be paid for business and travel expenses, such an arrangement should be included in the contract with the independent contractor (or guest lecturer/speaker), and provision for such expenses should be included in the Purchase Order. These expenses should be included on the invoice submitted by the independent contractor (or guest lecturer/speaker) to Accounts Payable and should not be processed under the University's accountable plan. Payments for these expenses are considered taxable income and will be included in the service provider's 1099-MISC earnings reported at the end of the calendar year. The independent contractor (or guest lecturer/speaker) is responsible for maintaining all records related to its business expenses; however, the University reserves the right to request additional information regarding any expenses it is charged under the contract.

Note: Penn cannot make travel arrangements, prepay travel expenses, or authorize direct billing for independent contractors. Doing so poses a potential employer liability to pay payroll taxes, pension benefits, leave accruals, etc.

Q. Do I have the right to expect that services will be provided by the one individual who signs the independent contractor agreement?

A. No. If the employer insists that services be provided "personally," then "employee" status is inferred. An independent contractor retains the right to assign or delegate the work to another. Example: An independent contractor, "John", signs an agreement to provide specified services for Penn; John is free to do the work himself, or to assign it to his employees or to other qualified independent contractors within

the framework of the contract. It is also acceptable for the contractor to stipulate a particular employee of the consultant with required expertise to work on the project as part of the agreement.

Q. My project may involve gathering or verifying data from outside sources. Can I have the independent contractor identify with Penn?

A. Not directly. Work performed under Penn's name infers "employee" status. Work performed under the worker's name infers independent contractor status. In the scenario described, independent contractor could say something like "My name is John Smith. I've been engaged by the University of Pennsylvania to gather data."

Q. X worked in my department as a part-time instructor for four years and left in 2011. He's available again, and I'd like to give him a teaching assignment, teaching the same subject he taught when he last worked here. However, he has informed me he has established a consulting business and prefers to return as an independent contractor, rather than as an employee. Can we do this?

A. Based on the information available, X should be classified as an employee. When he worked here previously, the employer/employee relationship was established. In similar cases, the courts have ruled that a school district that classified a teacher as an employee in one year is not allowed to treat the same worker, performing the same job, as an independent contractor in subsequent years. In this case, initially the school district exercised the degree of direction and control necessary to establish an employer/employee relationship, withheld taxes, maintained the right to evaluate performance, and provided the premises, tools, and materials to perform the job. The later designation of the worker as anything other than an employee was immaterial.

Q. Do we have to complete the Service Provider Questionnaire and Service Provider Evaluation Form for an honorarium also?

A. Generally, no. As long as this is a one-time only activity and falls within the guidelines of a true honoraria, these forms do not need to be completed. Please see the [Honoraria Payments page](#) of the Accounts Payable website for more information on what is required for the payment of Honoria.

Q. Do we need an additional contract beyond the standard purchase order contract?

A. For the majority of situations, the standard purchase order agreement is sufficient. Purchasing Services will review the scope of work of each engagement and determine if an additional contract is needed.