Agenda

- Background
- Hiring Freeze
- Determining Worker Classification
  - Employee
  - Honoraria
  - Limited Engagement
  - Independent Contractor
- Independent Contractor Process
  - Citizens and Resident Aliens
  - Nonresident Aliens
  - Other Considerations; sample situations
- Penn Marketplace
- Questions and Discussion
Background
Overview

- Compliance requirements
  - U.S. Department of Labor and IRS
  - Internal audit findings
- Actions taken to date
  - Formed advisory committee
  - Updated policies, processes, and forms
  - Piloted with schools/centers
  - Implementation 7/1/17
  - Hiring freeze
## Policy Revisions

<table>
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<tr>
<th>Policy</th>
<th>Title</th>
<th>Description of Updates</th>
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| 2319   | Payment to Individuals for Human Subject Fees, Honoraria, Limited Engagements and Independent Contractor Services | • Policy renamed and repurposed as preamble for 2319.1–2319.4  
• Definitions of different types of service providers updated  
• Eliminates provisions for how specific types of service providers are paid |
| 2319.1 | Payment of Human Subject Fees                                       | • *No changes - Policy updated August 2015 as part of Disbursements’ Greenphire implementation*                                                                                                                           |
| 2319.2 | Payment for Honoraria                                               | • Renames existing 2319.2 and limits scope of policy to payment of honoraria  
• Includes honoraria for U.S. citizens and resident aliens, as well as honoraria paid to nonresident aliens |
| 2319.3 | Limited Engagement                                                  | • Defines payment for a subset of Independent Contractors comprised of a narrow list of services or of a low dollar amount service provided by individuals  
• Requires determination/classification of an individual as an independent contractor occurs *prior* to agreement with individual or performance of services  
• Addresses payment to U.S. persons and nonresident aliens both inside and outside of the U.S. |
| 2319.4 | Procurement and Reporting of Independent Contractors                | • Brings into compliance process for procuring, paying, and reporting on services provided by independent contractors  
• Ensures determination/classification of an individual as an independent contractor occurs *prior* to agreement with individual or performance of services  
• Excludes current faculty, staff and students; former employees, including retirees; tutors; and instructors as independent contractors |
Determining Worker Classification
Hiring Freeze

- As of April 13, 2020, there is a University-wide hiring freeze for all new and replacement positions, except for grant-funded positions, through June 30, 2021. No hires should be made unless they have been approved through the exception process.
  - This process includes individual service providers
    - Independent Contractors and Limited Engagements

- Exclusions and Limits
  - Independent contractors being engaged for $5,000 or less are exempt from the hiring freeze
    - $5,000 or less for total engagement
    - Engagements greater than $5,000 require a hiring freeze exemption approval
  - Limited Engagements being paid $1,000 or less are exempt from the hiring freeze
    - Engagements greater than $1,000, cumulatively, require a hiring freeze exemption approval
Honoraria

- **Definition**
  - Gratuitous payment (or other thing of value) to person for participation in usual academic activity for which no fee is legally required
  - Token of appreciation – not a contractual obligation for services rendered
  - Travel expenses are reimbursed through GTR worksheet. Individuals must follow Penn’s travel reimbursement policy
  - State of PA considers honoraria non-employee compensation and requires withholding from non-residents if activity performed in Pennsylvania

- **Exclusions and Limits**
  - Made to individuals only, not a business, corporation, or partnership
    - Not negotiated or contracted
  - Payments of honoraria to University staff, faculty, or students prohibited
Honoraria – Determination

- Determination of Honorarium Payments
  - Is the individual a business, corporation or partnership?
  - Was the payment amount negotiated between the University and the individual?
  - Is there a contractual agreement?
  - Are the individual’s services recurring?
  - Is the individual faculty, staff, or student?
  - Did the individual set the price?

If the answer is "yes" to any of the above questions, the payment does not qualify as an honorarium.
Honoraria – Federal Taxes

- Federal

  - An honorarium is taxable income that is reported to the IRS on Form 1099 if the sum of annual payment(s) to the vendor is $600 for a calendar year. However, expenses reimbursed to an honorarium recipient are not considered taxable income.

  - All payments require a social security number.

    - As a general rule, payments made to non-resident aliens (NRA) through A/P for honorarium are subject to a 30% withholding unless the tax rate is reduced or eliminated by the presence of a tax treaty.

  - Further discussion required to address payments expensed to 1520 that need to be captured for 1099 reporting.
Honoraria – PA State Taxes

State

When a speaker travels out of state and earns a speaker's fee, it can create an additional level of complexity for taxation purposes. Many states consider a speech or other performance given within their borders to represent a "nexus" in the state that entitles them to claim taxes against the income the speaker earns.

For example, Pennsylvania requires tax be withheld at a rate of 3.07% on payments to non-Pennsylvania residents performing services in Pennsylvania.

Tax treaties for NRAs do not apply to state and local taxes.
Limited Engagement

- Penn created category of service - subset of Independent Contractors. Waives completion of independent contractor classification forms.

- A Limited Engagement Fee is a payment to an individual (non-employee, non-student) for providing a service of an academic nature, short duration:
  - This is intended for guest speakers, guest lecturers, artists, performers, writers/editors, board members, critics, preceptors, and mentors.
  - Service provided by an individual of a low dollar amount ($1,000 or less per transaction; $5,000 per calendar year max). This is not to pay individuals on an hourly basis.

- Limited Engagement Agreement Form
  - Send to Purchasing for review and signature prior to performance of services.
  - Signed Limited Engagement agreement, invoice, and tax forms uploaded into Penn Marketplace as a Non-PO Payment Request.

- Travel expenses associated with this engagement should be included on invoice. Travel expenses should be added to the service fee and total invoice amount will be reportable on the 1099-Misc.
Limited Engagement Process

If the provider’s services falls under the Limited Engagement category:

LE Providing Service within the U.S. – U.S. Person

- Have them complete and sign the Limited Engagement agreement
- Forward the Limited Engagement agreement to sourcing@upenn.edu for review and signature
- The signed Limited Engagement agreement will be returned to the hiring office
- If the individual is not an existing supplier, Request Non-PO payee be added as a new Non-PO supplier. If onboarding payee as their proxy, W9 will need to be securely obtained and uploaded.
- Non-PO Payment Request is prepared and the signed Limited Engagement agreement, and statement of work/supporting documents, if any, are uploaded.
Limited Engagement Process (cont’d.)

**LE Providing Service within the U.S. – Nonresident Alien**

- Have them complete and sign the Limited Engagement agreement

- Forward the Limited Engagement agreement to sourcing@upenn.edu for review, consultation with Tax Office for individual’s eligibility, signature

- The signed Limited Engagement agreement will be returned to the hiring office

- If the individual is not an existing supplier, request Non-PO payee be added as a new Non-PO supplier

- Payee will complete the supplier registration and is responsible for uploading their W-8BEN and passport in the secure portal. If payee is unable to access this portal/onboard themselves, a proxy function is available

- Non-PO Payment Request is prepared and the signed Limited Engagement agreement, statement of work/supporting documents, and I-94 U.S. Departure Record are uploaded.
Limited Engagement Process (cont’d.)

LE providing service outside of the U.S. - Global

If services falls within the LE guidelines, no additional approval needed by GSS.

- Have the individual service provider complete and sign the Limited Engagement Global agreement,
- Forward the Limited Engagement agreement to sourcing@upenn.edu for review and signature
- The signed Limited Engagement agreement will be returned to the hiring office
- For payment in US dollars, Request Non-PO payee be added as a new Non PO supplier; Non-PO Payment Request is prepared and the signed Limited Engagement Global agreement, W-8BEN, Certificate of Foreign Source Income, and statement of work/supporting documents, if appropriate, are uploaded (from the supplier or proxy)
- For payments in foreign currency, a PDA-FC form with signed Limited Engagement Global, W-8BEN, Certificate of Foreign Source Income, and statement of work/supporting documents, if appropriate, is emailed to AP by the approved designee in the department. If not already an assigned PDA-FC approver, email form to Renee Nowacyzk (reeneow@upenn.edu) for submission
Limited Engagement Process (cont’d.)

**LE Process under grant funding**

*If service falls within these categories, no further review required by ORS*:

- Service on a Data Safety Monitoring Board
- Service on a Scientific Advisory Board
- Service on other Advisory Boards (e.g. Community Advocate or Patient Engagement)

- Have individual service provider complete and sign the [Limited Engagement agreement](mailto:limited-engagement-agreement@upenn.edu) Forward the Limited Engagement agreement to [sourcing@upenn.edu](mailto:sourcing@upenn.edu) for review and signature

- The signed Limited Engagement agreement will be returned to the hiring office

- If the individual is not an existing supplier, [Request Non-PO payee be added as a new supplier](mailto:non-po-payee-request@upenn.edu)

- Non-PO Payment Request is prepared and the signed Limited Engagement agreement, and statement of work/supporting documents, if any, are uploaded. If onboarding payee as their proxy, W9 is uploaded also

*If service falls outside the ORS LE categories, contact Missy Peloso ([epeloso@upenn.edu](mailto:epeloso@upenn.edu) or 215-746-0234). ORS will provide documentation that the activity meets the Limited Engagement criteria or that the individual should be further classified.*
Independent Contractor

- Classification must occur *prior* to agreement with individual or performance of services
  - Service Provider Questionnaire (SPQ) completed by the potential service provider
  - Service Provider Evaluation Form completed by hiring manager, in concert with school/center HR director
- Procured through Purchase Order
- Exclusions from Independent Contractor classification
  - Current University faculty, staff and students
  - Former University employees, including retirees – If the individual is providing a service that is the same or similar to his/her previous position or that of a current employee
  - Tutors
  - Instructors
  - Academic Coaches and Advisors
Key Steps – U.S. Persons

Prior to any service being performed...

School/Center/Department:
- Requests service provider complete Service Provider Questionnaire and Scope of Work/Contract
- Reviews questionnaire and completes Service Provider Evaluation
- Forwards documentation to school/center HR

School/Center HR Director:
- Reviews documentation and determines classification

Independent Contractor
- Paperwork returned to School/Center/Dept. for IC processing (in partnership with Purchasing)

Employee
- Paperwork returned to School/Center/Dept. to initiate hiring or to engage as a temporary employee
Key Steps – Nonresident Aliens

Prior to any service being performed...

School/Center/Department:
- Requests service provider complete and submit SPQ, Foreign National Intake/Interview Form
- Contact TIO for visa review and paperwork advise
- Reviews documentation and completes Service Provider Evaluation
- Forwards documentation to school/center HR

School/Center HR Director:
- Reviews documentation and determines classification

Independent Contractor
School/Center/Dept. includes documentation in Marketplace submission

Employee
Paperwork returned to School/Center/Dept. to initiate hiring or to engage as a temporary employee
University of Pennsylvania Service Provider Questionnaire

The information on this form is used to determine whether an individual providing services is an independent contractor under IRS guidelines. This form must be completed and signed by the individual performing the services, and reviewed and signed by the individual responsible for contracting for the services, prior to the rendering of any services. No payment for any services will be made otherwise.

Scope of Work:

Please provide a brief description of the services that will be provided.
Service Provider Evaluation Worksheet

SERVICE PROVIDER EVALUATION WORKSHEET

- This worksheet must be completed by the individual needing a service provider in concert with the applicable HR personnel PRIOR to hiring or processing through Purchasing.
- Do NOT submit this worksheet to the service provider.
- Do NOT complete this worksheet until after the service provider has returned a completed Service Provider Questionnaire. Provide a copy of the Service Provider Questionnaire to the Human Resource Personnel reviewing this form.
- Attach a brief description of services in your own words.
- Included in this worksheet is guidance provided by the IRS and DOL to help with the determination and classification as employee vs. independent contractor, which is designed to assist you in evaluating the relationship between the service provider and the University of Pennsylvania.
- If the service provider you wish to hire or contract with is a current University Employee, he or she must be paid as an employee and not as an independent contractor.
- An independent contractor will not be reimbursed for travel expenses via the CONCUR system. These fees must be included as part of the service provider’s invoice to the University, if allowed by the terms of the engagement. Any payment of such fees by the University will be included in the total earnings reported at calendar year-end.
- Once the answer to a question below is “TREAT AS AN EMPLOYEE,” no further questions need to be addressed. Continue the process for employment with your School or Center Human Resource Manager.*

Submission Date: ____________________________

Name of the Service Provider being evaluated: ____________________________________________

Name and Title of the individual who completed this form: __________________________________

Name of School/Center and Department or Unit: ____________________________________________
Pay & Travel Reimbursement

Worker Classifications

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<th>INDEPENDENT CONTRACTOR</th>
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<tr>
<td>1099</td>
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Other Considerations

- **Hiring Freeze**
- **Independent Contractor**
  - Role of Purchasing
  - State of PA Withholding for services performed in Pennsylvania
- **Honoraria**
  - State of PA considers honoraria non-employee compensation and requires withholding from non-residents if activity performed in Pennsylvania
- **Regular Employee**
  - Position must be posted
  - I-9 forms for those out of region
- **Temporary Penn Employee**
  - Professional Service Provider
  - Affordable Care Act
- **Temporary Employee from Outside Agency**
  - No payrolling
Penn Marketplace Enhancements

- Suppliers self-register; insuring greater security of sensitive information
  - Suppliers will have option to have payment direct deposited
  - Individuals are invited to use the portal to register. They enter their tax and payment preference (ACH Direct Deposit, check) information through a secure site.

- Hiring office can onboard individual service providers via proxy registration
  - Proxy registration only allows payment by check
Next Steps/Updates

- Continuation of ISP training/awareness campaign
- Management, Audit, and Exception Reporting
Questions and Discussion

- Website
  - [www.hr.upenn.edu/service-provider-classification](http://www.hr.upenn.edu/service-provider-classification)
Thank you