Individual Service Providers: Classification & Payment

July 22, 2021
Agenda

- Background
- Hiring Freeze – *as of 7/1/21, it has been lifted*
- 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
<table>
<thead>
<tr>
<th>Policy</th>
<th>Title</th>
<th>Description of Updates</th>
</tr>
</thead>
<tbody>
<tr>
<td>2319</td>
<td>Payment to Individuals for Human Subject Fees, Honoraria, Limited Engagements and Independent Contractor Services</td>
<td>• Policy renamed and repurposed as preamble for 2319.1–2319.4&lt;br&gt;• Definitions of different types of service providers updated&lt;br&gt;• Eliminates provisions for how specific types of service providers are paid</td>
</tr>
<tr>
<td>2319.1</td>
<td>Payment of Human Subject Fees</td>
<td>• No changes - Policy updated August 2015 as part of Disbursements’ Greenphire implementation</td>
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<tr>
<td>2319.2</td>
<td>Payment for Honoraria</td>
<td>• Renames existing 2319.2 and limits scope of policy to payment of honoraria&lt;br&gt;• Includes honoraria for U.S. citizens and resident aliens, as well as honoraria paid to nonresident aliens</td>
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<tr>
<td>2319.3</td>
<td>Limited Engagement</td>
<td>• Defines payment for a subset of Independent Contractors comprised of narrow list of services or of a low dollar amount service provided by individuals&lt;br&gt;• Requires determination/classification of an individual as an independent contractor occurs prior to agreement with individual or performance of services&lt;br&gt;• Addresses payment to U.S. persons and nonresident aliens both inside and outside of the U.S.</td>
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<tr>
<td>2319.4</td>
<td>Procurement and Reporting of Independent Contractors</td>
<td>• Brings into compliance process for procuring, paying, and reporting on services provided by independent contractors&lt;br&gt;• Ensures determination/classification of an individual as an independent contractor occurs prior to agreement with individual or performance of services&lt;br&gt;• Excludes current faculty, staff and students; former employees, including retirees; tutors; and instructors as independent contractors</td>
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</table>
Determining Worker Classification
Honoraria

**Definition** (excerpted from IRS regulations)
- 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

**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

**Marketplace Update**
- Honoraria payment requests to University staff, faculty, students, or business entities will be rejected
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
  - **BEFORE** performance of services, send to Procurement Services for review and signature
  - 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 - US Persons
- 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. (proxy is not the preferred method)
- Non-PO Payment Request is prepared and the signed Limited Engagement agreement is uploaded.
LE Providing Service within the U.S. – Nonresident Alien

- Have them complete and sign the [Limited Engagement agreement - Non-Resident Alien](#) – updated 7/9/21

- 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 – **should be used only if payee cannot access portal**

- Non-PO Payment Request is prepared and the signed Limited Engagement agreement is 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 agreement - Outside US – Global](#) – updated 7/9/21
- 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 payee is not an active Foreign Non PO supplier, request Non-PO payee be added as a new Foreign Non PO supplier
- For payment in US dollars, a Non-PO Payment Request is prepared with the signed Limited Engagement Global agreement attached.
- For payments in foreign currency, *which should be submitted as an exception if supplier can only invoice in local currency, as Penn prefers to process and pay invoices in US dollars,* an FC Non-PO Payment Request is prepared with the signed Limited Engagement Global agreement attached.
Foreign Currency Non-PO Payment Requests

In the Penn Marketplace

- On-boarding:
  - FC Supplier needs to be **active or on-boarded** before submitting a request
  - Will be **reviewed by Tax** within on-boarding workflow

- **FC Non-PO Payment Request**:
  - **FC invoice** needs to be attached
  - **FC and FC amount** need to be provided
  - We will ask for **the last 4 digits of the vendor’s bank account #** (if available)
  - A **preliminary translation** to USD needs to be provided
  - After approvals are completed the invoice will **stop in an AP queue**
  - AP will process the FC currency payment and adjust the USD amount (**actual translation**) in the Marketplace prior to feeding BEN..
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 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 supplier

- 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 will need to be securely obtained and uploaded.(proxy is not the preferred method)

*If service falls outside the ORS LE categories, contact Missy Peloso (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 & NRA

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 Procurement Services)

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

- 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

<table>
<thead>
<tr>
<th>EMPLOYEE</th>
<th>GUEST</th>
<th>INDEPENDENT CONTRACTOR</th>
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<tbody>
<tr>
<td>Pay</td>
<td>Payroll</td>
<td>AP Honoraria/Award</td>
</tr>
<tr>
<td>T&amp;E</td>
<td>Concur</td>
<td>AP GTR Worksheet</td>
</tr>
<tr>
<td>Accountable Plan</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Limited</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>PO?</td>
<td>Not Limited</td>
<td>Limited</td>
</tr>
<tr>
<td>Questionnaire</td>
<td>PO</td>
<td>Non-PO Payment</td>
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<tr>
<td>1099</td>
<td>Yes</td>
<td>Yes - All</td>
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<td></td>
<td>Yes</td>
<td>Yes - All</td>
</tr>
</tbody>
</table>
Other Considerations

- Individual service providers are considered employees unless proven otherwise

- **Independent Contractor**
  - Role of Procurement Services
  - State of PA requires withholding from non-residents if activity performed in PA

- **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
Suppliers self-register; ensuring 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, not preferred method

- Approval workflow for payment type ‘Honoraria’ includes a compliance review. Non-compliant requests will be rejected.
- Approval workflow for payment type ‘Other’ includes a financial policy review. Non-compliant requests will be rejected.

- Foreign Currency Non-PO Payments
- Effective 8/2/21, current classification forms, LE agreements must be used
Questions and Discussion

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