



Administration and Finance

Policy No: 3312

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Approved by:
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Director
Financial Services

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Refer Questions to:
Manager
Payroll
410-706-6958

USM Board of Regent's
Policy Reference:
N/A

Policy Name:

Payments to Foreign National Independent Contractors

Policy:

University of Maryland, Baltimore (UMB) will pay foreign nationals as independent contractors only after determining that the foreign nationals are eligible to be paid as independent contractors. Payments will be subject to federal withholding as required by law. Departments must collect documentation needed by FS-Payroll to determine whether foreign nationals are eligible, under common law, tax law, and immigration law, to be paid as independent contractors. Common law and tax law will be followed to determine whether a foreign national's intended service for UMB can be the basis of an independent contractor arrangement and the appropriate tax withholding from payment to the independent contractor. Immigration law will be applied to determine whether a foreign national is eligible to work and be paid as an independent contractor. Final decisions will be made by FS-Payroll. No commitment to engage a foreign national as an independent contractor should be made prior to securing FS-Payroll's approval.

Definitions and Terms:

- Foreign national - Any person other than a US citizen
- Resident alien (RA) – An individual who (a) is not a US citizen and (b) meets the green card test or substantial presence test (Both tests are set out by the IRS. See Foreign National Independent Contractor Payment Form to provide FS-Payroll the information required for both tests.)
- Non resident alien (NRA) – An individual who is not a US citizen or a resident alien (defined above). A resident of a foreign country under the residence article of an income tax treaty is an NRA for purposes of withholding.
- ITIN – Individual Taxpayer Identification Number
- IRS – Internal Revenue Service
- Independent contractor – An individual providing to UMB services of limited scope and duration who has been determined to be an independent contractor, under IRS rules and common law, rather than an employee. For purposes of this policy, the term includes individuals receiving honoraria as well as individuals being paid for services of longer duration than the services that may be compensated by honoraria.
- Honoraria – One-time payments, generally lump sums, paid to individuals for specific services such as speeches, academic lectures, and demonstrations, generally provided on one date or during one brief business visit of a week or less at UMB.

Purpose:

1. To provide guidelines to the campus schools and departments regarding information required, and procedures FS-Payroll will follow, to determine whether a foreign national may be paid as an independent contractor and the tax treatment of that payment.
2. To provide guidelines to the campus schools and departments regarding the information that must be provided to FS-Payroll to make these determinations.



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Scope:

Compensation for independent contractors, including consulting fees and honoraria paid to visiting professors, teachers, researchers, scientists, and speakers, as well as other types of independent contractor arrangements.

Restrictions and Exclusions:

This Policy does not apply to UMB employment of or UMB contracts with:

- US citizens
- Students, faculty and staff employed at UMB
- Foreign national students receiving a scholarship or fellowship
- Study participants
- Compensation for services performed entirely outside of the United States

Related / Impacted Policies:

N/A

Procedures:

I. Eligibility for payment:

- A. Campus schools/departments must contact FS-Payroll **BEFORE** making arrangements for a foreign national to perform independent contractor service for UMB. FS-Payroll will review the information provided by the foreign national, through the school or department, and determine whether the foreign national is a non resident alien (NRA) or a resident alien (RA) for tax purposes.
- B. Campus schools/departments must collect the following information from the foreign national (using the Foreign National Independent Contractor Payment Form) for review by FS-Payroll:
 1. Personal Data
 - a. Name of the individual
 - b. Address in the United States
 - c. Address in country of residence
 - d. Citizenship country
 - e. Telephone number
 - f. Email address
 2. Date of arrival in the US for purposes of the visit and estimated date of departure
 3. Country of tax residence
 4. Current U.S. immigration status and primary purpose of the visit to the U.S. during which services would be provided



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5. Expiration of current immigration status
 6. Information about all prior visits to the U.S., including dates of arrival and departure, immigration status, and primary purpose of visits
 7. Location where the service for UMB is to be performed
- C. FS-Payroll will contact campus schools/departments to confirm the eligibility for payment of the foreign national, and will inform campus schools/departments what further action needs to be taken to generate the information needed for payment processing. If FS-Payroll cannot confirm eligibility, the school/department will be advised.
- D. After receiving confirmation from FS-Payroll, campus schools/departments (a) can formalize the arrangements for the foreign national to perform independent contractor service at UMB following the established standard procurement procedure or procedure for payment of honoraria, and (b) complete the Foreign National Independent Contractor Payment Form as instructed by FS-Payroll, and obtain a Tax Summary Report, using the tax calculation software made available by the campus. Further instructions will be issued by FS-Payroll to departments approved to pay foreign nationals as independent contractors. If confirmation is not received, the schools/departments cannot proceed.

II. Payment process:

- A.
1. If the foreign national is RA for tax purposes, payment will be made through the standard campus procurement procedure or Accounts Payable easy payment process
 2. If the foreign national is NRA for tax purposes, payment will be made through the standard campus procurement procedure and the process stated below.
- B. Payment to a NRA independent contractor is subject to a 30 percent rate of federal tax, which must be withheld from the payment, unless an income tax treaty exempts the income or modifies the rate.
- C. Insufficient documentation will result in 30 percent federal tax withholding.
- D. Required forms and documents must be sent to FS-Payroll prior to engaging the NRA, or permitting the NRA to provide services for which payment is anticipated.



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Forms and Documents Required, and Tax Rates, for Foreign National Independent Contractors.

TYPES OF PAYMENT	TAX TREATY ELIGIBILITY	FORMS & REQUIRED DOCUMENTS	TAX
INDEPENDENT CONTRACTOR	With SS Card/ITIN No Tax Treaty Available	Foreign National Independent Contractor Payment Form (FNIC) Tax Summary Report Contract W-8 BEN Copy of I-94 (Departure Record) Copy of unexpired visa page in the passport Copy of SS card or ITIN Copy of Purchase Order	30%
	No SS card/ITIN Not eligible for Tax Treaty	FNIC Tax Summary Report Contract Copy of I-94 (Departure Record) Copy of unexpired visa page in the passport W-8 BEN W-7 Affidavit of Compliance Notarized Copy of passport Copy of Purchase Order	30%
	With SS Card/ITIN Tax Treaty Available	FNIC Tax Summary Report Contract Copy of I-94 (Departure Record) Copy of unexpired visa page in the passport Copy of SS card or ITIN W-8 BEN Form 8233 Copy of Purchase Order	Exempt from Federal Tax Withholding



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TYPES OF PAYMENT	TAX TREATY ELIGIBILITY	FORMS & REQUIRED DOCUMENTS	TAX
HONORARIA	With SS Card/ITIN No Tax Treaty Available	FNIC Tax Summary Report Letter of Agreement or Contract Copy of I-94 (Departure Record) Copy of unexpired visa page in the passport Copy of SS card or ITIN W-8 BEN Honoraria statement (ONLY for B1, B2, WB, WT visa holders)	30%
	No SS card/ITIN Not eligible for Tax Treaty	FNIC Tax Summary Report Letter of Agreement or Contract Copy of I-94 (Departure Record) Copy of unexpired visa page in the passport Affidavit of Compliance W-8 BEN W-7 Notarized Copy of passport Honoraria statement (ONLY for B1, B2, WB, WT visa holders)	30%
	With SS Card/ITIN Tax Treaty Available	FNIC Tax Summary Report Letter of Agreement or Contract Copy of I-94 (Departure Record) Copy of unexpired visa page in the passport Copy of SS card or ITIN W-8 BEN Honoraria statement (ONLY for B1, B2, WB, WT visa holders) Form 8233	Exempt from Federal tax withholding



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E. Payment Restrictions for Independent Contractor Individuals having Selected Visa Types NOT sponsored by University of Maryland, Baltimore (UMB)

Visa Type	Payment as Independent Contractor Authorized	Payment Permitted	Conditions
A-1, A-2 Diplomats and foreign government officials and their dependents	No. May only work for foreign government entity.	Payment can be made only to the foreign government entity, not to the individual.	
B-1, WB Business visitors or waiver of visa for business B-2, WT Visitors for pleasure or waiver of visa for tourism	No. Exception for higher education institutions for "usual academic activities" lasting not longer than 9 days.	Honorarium and associated incidental expenses (travel reimbursement or payment of travel expenses on behalf of visitor).	9/5/6 rule. Defines academic activity. Academic activity lasts 9 days or less. Visitor has not accepted honoraria from more than 5 institutions within previous 6-month period. Travel reimbursement follows rules of UMB's travel reimbursement policy.
F-1 Student on Optional Practical Training	Yes. Must be work authorized by student's U.S. institution and consistent with educational level and field of study.	Per contract. Optional Practical Training almost never occurs as an independent contractor. Employment for practical training is customary.	
H1B Professionals O-1 Individual of Extraordinary Ability TN Trade NAFTA (for citizens of Canada and Mexico)	No.	Payment can be made only to the sponsoring institution, not to the individual. Payment for an accomplishment (e.g., a prize) is permitted. If an individual on one of these visas visits UMB to carry out work within the scope of visa-authorized employment, UMB may pay the employer, not the individual.	TN may work for multiple employers but must have TN for each.



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Visa Type	Payment as Independent Contractor Authorized	Payment Permitted	Conditions
J-1 Professor, Research Scholar, Short-term scholar, Student	Yes. May work only for sponsoring institution, but may give occasional talks or conduct similar activity at other institutions with written specific permission from sponsoring institution.	Honorarium and associated incidental expenses (travel reimbursement or payment of travel expenses on behalf of visitor).	Travel reimbursement follows rules of UMB's travel reimbursement policy.
P-1 Internationally Known Athlete or Entertainment Group; P-2 & P-3 Performing Artists or Culturally Unique Entertainers	Yes. May work only for sponsoring employer or through sponsoring agency (as specified in petition).	Payment as specified in contract terms.	UMB must be listed in the itinerary submitted with the Status Petition. Revisions to itinerary require a new Petition, which may take 3 weeks or more to be approved.

Sample Forms:

- All the forms referenced in II. D. can be obtained from:
<http://www.fincsvc.umaryland.edu/payroll/>
- This Policy refers to forms that are used or generated by the tax software package referred to in the FNIC. UMB is using that software to assist with tax compliance. Additional information will be provided to departments when payment of foreign nationals as independent contractors is approved.