

Engaging Independent Contractors

Effective Date: December 28, 2016

Function: Purchasing

Contact: [Megan Moran](#)

Basis for Procedure

Departments often engage the services of individuals who are not employees of the Research Foundation, including independent contractors, guest lecturers, entertainers, suppliers, and others. It is important to correctly classify independent contractors and employees to ensure appropriate compensation method and tax obligation.

This procedure sets out the criteria that define independent contractors and the required procedures to correctly classify and pay them.

Procedure Summary

The following two types of documentation are required when engaging an independent contractor who is a person or sole proprietor:

- Documentation that the person has been classified as an independent contractor. The [Independent Contractor Services Form](#) or an equivalent operating location form can be used.
- Documentation notifying the worker of his or her status as an independent contractor when fees and expenses are greater than \$599.99. The Working Relationship Form, Independent Contractor Standard Agreement, or an equivalent operating location form can be used.

Procedure

Classify the Worker

If the worker is a person or sole proprietor, he or she must be properly classified as either an independent contractor or an employee when establishing the work relationship. A person cannot simultaneously have an employee and an independent contractor relationship with the Research Foundation (RF).

Document [Classifying Workers as Employees or Independent Contractors](#) provides definitions of "employee" and "independent contractor" and describes the IRS "categories of evidence" and the twenty-factor "Common Law Test" used to classify workers.

When to classify

The classification must be done before payment is made, but should be done before the services are rendered.

Documenting the classification

The classification must be documented. The [Independent Contractor Services Form](#) or an equivalent operating location form can be used to document the classification.

Note: If the person or sole proprietor is providing an incidental service (such as a lecture), refer to the "Exceptions" block in this document.

Determine Citizenship Status

If the independent contractor is a person or sole proprietor, he or she must be classified as a U.S. citizen, resident alien, or nonresident alien so that the appropriate tax is withheld and reported. [Classification of Aliens as Residents or Nonresidents for Tax Purposes](#) provides definitions and describes the tests used to make the determination.

In addition, a nonresident alien must have the appropriate visa type or NAFTA status in order to be paid as an independent contractor. [Visa and NAFTA Status](#) provides information about the employability of different visa holders. Nonresident aliens who hold an F or J visa status have special conditions (e.g., may require written authorization from the designated school official). Refer to the Nonresident Alien section of the Personnel Operations Manual for specific conditions.

If it is determined that a person is a nonresident alien and will be either (a) providing incidental services in the United States, (b) only receiving reimbursement for expenses (not compensation), or (c) working outside the U.S., refer to the "Exceptions" block.

When to make the determination

The citizenship determination can be done at the time of engagement or before payment

Review and Certify Documentation

Project directors must submit documentation to the appropriate business office to demonstrate that

- the worker is properly classified as an independent contractor (only applies to persons and sole proprietors),
- the work is essential to the project,
- the services cannot be provided by any other person receiving salary support under the award, and
- the fee and expenses are appropriate.

The [Independent Contractor Services Form](#) or equivalent operating location form that was used to document the classification of the worker as an employee or independent contractor can be used. This form contains the required information listed above.

Locations may want to consider adding additional questions to the form related to the person's employment history. For example, it may be useful to know whether the person was previously or is currently employed by the RF (for worker classification considerations) and whether or not he or she is a SUNY employee (for honorarium limitations).

Certification

The operations manager or delegate must sign the form to certify that the classification is correct and the engagement is consistent with all sponsor, SUNY, and RF compliance requirements. Refer to [How to Review a Request for Goods, Services, and Payment](#) and [Guidelines for Vendor or Independent Contractor Selection](#) for compliance considerations.

Operating locations must establish a process for notifying the office responsible for payment that the classification and review of engagement has been completed and approved.

Notify Contractor of Status

What to Use

Independent contractors who are persons or sole proprietors who will be receiving fees and expenses in excess of \$599.99 must be notified of their status as an independent contractor. The notification can be done through the standard independent contractor agreement ([Independent Contractor Standard Agreement](#)) or the [Working Relationship Form](#) (or an equivalent location-specific form) when the standard agreement is not required.

The [Working Relationship Form](#) contains information about the person's status as an independent contractor (e.g., it explains that independent contractors are not eligible to file for or collect unemployment benefits). The form also provides space to describe the services, period of service, fees and expenses, payment schedules, technical and final reporting requirements, and other information about the engagement. Refer to the Forms and Originals

page of the RF Web site for a sample Working Relationship Form.

If a location-specific form is developed, it must contain the same information as the [Working Relationship Form](#), including the scope of work and the maximum dollar amount of compensation that can be paid for the services.

Distribution

The form must be completed and sent to the independent contractor before payment when the standard agreement is not used and the fees and expenses are greater than \$599.99. The form must be signed by the contractor and returned to the location when the fees and expenses are greater than \$2,499.99 and the standard agreement is not used.

Note: This notification is not required when certain incidental lectures or services are provided. Refer to the "Exceptions" block for more information.

Engage the Contractor

A procurement instrument outlining the scope of work and maximum dollar amount to be paid is required when engaging an independent contractor. The instrument, either a purchase order, formal contract, or the Independent Contractor agreement must be provided to the contractor.

For persons and sole proprietors, the procurement instrument can be the same document used to notify the person of his or her status (see "Notify Contractor of Status" block). An Independent Contractor should not be engaged using a check request without a corresponding purchase order, contract, and/or Independent Contractor agreement.

Paying the Contractor

If the contractor is a . . .	then . . .
person, sole proprietor, or partnership	a miscellaneous income payment will be made. Refer to Overview of Miscellaneous Income Payments . Also if an honorarium payment will be made, refer to Honoraria Policy for additional requirements that must be met.
corporation or other organization	an invoice will be processed through the Accounts Payable module. Refer to Invoice and Payment Process .

Exceptions

If it is determined that a person or sole proprietor is

- providing an incidental service (such as a lecture) or
- a nonresident alien and will be either (a) providing incidental services in the United States, (b) only receiving reimbursement for expenses (not compensation), or (c) working outside the U.S., then locations can engage the person without formally classifying the worker, using the [Working Relationship Form](#), or submitting the documentation for review. In this situation, a review should be conducted to ensure that the services were performed, the fees and expenses are appropriate, and that there is some type of invoice on file. If the person is a nonresident alien, he or she must have the appropriate visa or NAFTA status in order to be paid as an independent contractor, as outlined in [Visa and NAFTA Status](#).

Example

If a lecturer is delivering a one-time lecture on a specific area of expertise, the person can be engaged without meeting documentation requirements. If, however, the speaking engagements are extensive and will take place over a longer period of time, the engaging process should conform to the documentation requirements described in this document.

It should also be noted that a lecturer with an ongoing working relationship may be considered an employee.

Honoraria

Lecturers providing an incidental lecture(s) without requesting compensation may be paid an honorarium. Specific rules apply to the payment of honoraria. Refer to [Honoraria Policy](#).

Definitions

None

Related Information

[Classifying Workers as Employees or Independent Contractors](#)

[Classification of Aliens as Residents or Nonresidents for Tax Purposes](#)

[Visa and NAFTA Status](#)

[How to Review a Request for Goods, Services, and Payment](#)

[Guidelines for Vendor or Independent Contractor Selection](#)

[Overview of Miscellaneous Income Payments](#)

[Invoice and Payment Process](#)

[Honoraria Policy](#)

Forms

[Independent Contractor Services Form](#)

[Independent Contractor Standard Agreement](#)

[Working Relationship Form](#)

Change History

Date	Summary of Change
December 28, 2016	Fixed all broken links, updated to the new procedure template and revised the Basis for Procedure.
December 2, 2003	New document.

Feedback

Was this document clear and easy to follow? Please send your feedback to webfeedback@rfsuny.org.

Copyright © 2011 The Research Foundation of State University of New York