

# Procedural Guide for Independent Contractors and Limited Engagements

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## Purpose

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

**Definitions** – The Definitions section provides a breakdown of the various types of payments and terms used within the guide.

**Forms** – The Forms section provides a listing of the various forms used when engaging and paying a service provider.

**Process** – The Process section provides a step-by-step process to follow in situations that require engaging a service provider.

**FAQs** – The FAQs provide answers to frequently asked questions surrounding service providers.

## Definitions

**Honorarium:** An honorarium is a gratuitous payment of money or anything of value to a person for their 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*

**School or Center Representative:** For the purposes of this policy, the school or center representative is the individual responsible for procuring services of a service provider. The school or center representative must be either a Business Administrator or Human Resources representative within the school or center.

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

Related Object Code: 5316 Human Subject Payments

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

**Limited Engagement Fee:** A limited engagement fee is a payment to an individual for providing a service of an academic nature, short duration, and low dollar amount (\$1,000 or less per transaction; \$5,000 per calendar year max). Limited engagement fees are for guest speakers, guest lecturers, artists, performers, writers, editors, board members, critics, preceptors, mentors, and those services meeting the fee guidelines. They are not for faculty, staff, or students. ([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 provider of general 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 skillset not found elsewhere within the University, and provide the same or similar services to the 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. Effective January 1, 2018, the University is required to

withhold Pennsylvania state tax on payments to individuals who are non-Pennsylvania residents, and who are performing services in Pennsylvania. The University will comply with all U.S. federal, state, or local withholding requirements on income taxes on behalf of individuals. ([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; 5319 External Other Professional Services; 5331 Minor Equipment Repairs and Maintenance; 5332 Subcontract Services – up to \$25,000; 5333 Subcontract Services – over \$25,000; 5339 External: Other Services; 5400 Housekeeping/Cleaning (external providers only); 5401 Repairs & Maintenance to Facilities and Capitalized Equipment; 5402 External: Security Services; 5404 Trash Removal (external providers only); 5405 Pest Control – Pest control services for buildings provided by external providers; 5406 Groundskeeping (External providers only); 5409 Other Operations & Maintenance; 1930 Architectural/Engineering fee; 1931 Architect/Construction contingency; 1932 Architectural Reimbursable; 1933 Consultants; 1934 Consultants – Landscape Allowance; 1935 Consultants – Other.

**Employee/Employer Relationship:** This determination is central to the question of how to pay an individual for services provided to the University. Current or past employees of the University are compensated through Workday in most cases. Individuals who are independent contractors should be processed in accordance with [Policy #2319.4](#), as noted above.

**Temporary Worker:** A temporary worker is an individual hired to augment staff for a predetermined specific period of time. To determine whether the temporary employee should be placed in Workday or hired through a third-party vendor, contact your Human Resources representative. Temporary workers may be eligible for some benefits, including medical coverage and paid sick time.

**Nonresident Alien (for U.S. tax purposes):** An individual is a nonresident alien for U.S. federal tax purposes if they do not pass the green card test or the substantial presence test.

**Resident Alien (for U.S. tax purposes):** An individual is a resident alien for U.S. federal tax purposes if they are a Lawful Permanent Resident of the United States or pass the substantial presence test at any time during the calendar year.

**Human Resources (HR):** For this policy, HR refers to the HR staff within the schools and centers. Schools and centers without HR staff positions should refer to their Business Office.

## Forms

Below are links to and descriptions of the forms used to review and process payments to independent contractors. The Process section describes situations in which to use each form.

### [Service Provider Questionnaire](#)

*The school or center sends this form to the service provider for completion before formally engaging them.*

The purpose of this form is to gather information from a service provider before engaging them to assist in determining whether their relationship with the University is as an independent contractor or employee. This form is not for 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.**

### [Service Provider Evaluation Worksheet](#)

*The school or center completes the worksheet and sends it to the Compliance Specialist in Corporate Tax, Compliance, and Payroll along with the completed and signed Service Provider Questionnaire for review and final determination via a [BEN Helps Support Ticket](#).*

The purpose of this form is to assist the Compliance Specialist in evaluating a service provider's relationship with the University. The school or center should complete this form based on the information provided in the Service Provider Questionnaire and any other relevant information concerning the project. **The Compliance Specialist is responsible for making the final classification determination.** In situations where the activity occurs outside the United States, Global Support Services (GSS) will make the classification determination. Office of Research Services (ORS) may review if the activity is fully or partially funded through federal grant money.

### [Limited Engagement Agreement – Services within the U.S. \(U.S. Persons\)](#)

*The school or center completes this form and sends it to the Compliance Specialist in Corporate Tax, Compliance, and Payroll for approval before engaging the individual via a [BEN Helps Support Ticket](#). The Compliance Specialist will review and sign the form.*

The purpose of this form is to formally document the relationship between the University and a U.S.

person providing a service within the U.S. of an academic nature, for a short duration, and low dollar amount (\$1,000 or less per engagement; \$5,000 per year max). Complete this form **before** engaging an individual to provide services to the University. A new Limited Engagement Agreement must be completed for each engagement. If the engagements become more frequent, the Compliance Specialist will review the relationship to determine whether a different classification is more appropriate.

#### Limited Engagement Agreement - Services within the U.S. (Nonresident Aliens)

*The school or center completes this form and sends it to Corporate Tax, Compliance, and Payroll for approval before formally engaging the individual via a [BEN Helps Support Ticket](#). The Payroll Accountant will review the LE agreement to determine eligibility of individual receiving payment for services. The Compliance Specialist will review and sign the form.*

The purpose of this form is to formally document the relationship between the University and a **nonresident** alien providing a service within the U.S. of an academic nature, short duration, and low dollar amount (\$1,000 or less per engagement; \$5,000 per year max). Complete this form **before** engaging an individual to provide services to the University. There may be restrictions to the work a nonresident alien can perform in the U.S. based on their visa status. Additional paperwork may be required for processing payment. A new Limited Engagement Agreement must be completed for each engagement. If engagements become more frequent, the relationship will be reviewed by the Compliance Specialist to determine whether a different classification is more appropriate.

#### Limited Engagement Agreement Global – services outside the U.S.

*The school or center completes this form and sends it to the Compliance Specialist in Corporate Tax, Compliance, and Payroll for approval before formally engaging the individual via a [BEN Helps Support Ticket](#). The Compliance Specialist will review and sign the form. Global Support Services may also review.*

The purpose of this form is to formally document the relationship between the University and an individual providing a service of an academic nature, short duration, and low dollar amount (\$1,000 or less per engagement; \$5,000 per year max) **outside of the U.S.** Complete this form **before** engaging an individual to provide services to the University. A new Limited Engagement Global Agreement needs to be completed for each engagement. If engagements become more frequent, the relationship will be reviewed by the Compliance Specialist to determine whether a different classification is more appropriate.

## Process

The following procedures are to 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) The school or center identifies a need for service and the provider they would like to engage.
- 2) The school or center requests the service provider complete the [Service Provider Questionnaire](#).
- 3) Using the completed Service Provider Questionnaire and their knowledge of the project, the school or center completes the [Service Provider Evaluation Worksheet](#).
- 4) The school or center sends the below documentation to the Compliance Specialist by submitting a ticket through the [BEN Helps Support Portal](#) and attach the following documentation:
  - a) The completed and signed Service Provide Questionnaire
  - b) The completed and signed Service Provider Evaluation Worksheet
  - c) Any other relevant documentation
- 5) The Compliance Specialist reviews the documentation to determine the correct classification status for the individual. The Compliance Specialist is responsible for making the final classification determination for services provided inside the U.S. Global Support Services is responsible for making the final classification determination for service provided outside the U.S.
  - a) There are additional considerations if the activity will occur outside of the United States. Contact GSS before engaging an individual for services that will transpire outside the U.S. More information is available on Global Support Services' [Working Abroad](#) website.
  - b) For nonresident aliens, the Payroll Accountant reviews the registration documentation and verifies whether the nonresident alien can be paid for services.
    - i) If the Payroll Accountant determines the nonresident alien **is ineligible to receive compensation** for the described services based on their visa status, the school or center informs the nonresident alien and engages a different service provider.

- ii) If the Payroll Accountant determines the nonresident alien is eligible to receive compensation for the described services, the Compliance Specialist reviews the documentation and makes the final classification determination.
- 6) If the service provider should be engaged as an employee, the documentation is returned to the school or center so they can work with Human Resources to complete the hiring process.
- a) If the individual is hired as an employee but is not located near the main campus, the University has a reciprocal agreement with various institutions across the country to verify the I-9 on behalf of the University. You can find the nearest location to the employee by going to <https://www.cupahr.org/knowledge-center/i-9-consortium> or contacting your Human Resources representative.
- 7) If the service provider should be engaged as an independent contractor, the documentation is returned to the school or center for independent contractor processing.
- a) If the independent contractor is not in Penn Marketplace as a PO supplier, [request a new PO supplier](#).
    - i) The school or center creates a PO for the service and then consults with Procurement Services to put together an additional contract, if necessary, between the independent contractor and the University. Procurement Services is responsible for reviewing and signing all Personal/Professional Service Agreements on behalf of the University.
      - (1) **If a service provider submits their own contract, forward it with the remainder of the paperwork through the process.** Procurement Services is responsible for reviewing and signing all Personal/Professional Service Agreements on behalf of the University, which includes agreements for both domestic and international services.
    - ii) Once the contract is executed by the independent contractor and Procurement 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 submits an invoice(s) through the Penn Marketplace.



## Limited Engagement Process

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

If the provider's services fall under the Limited Engagement agreement:

- 1) Have the service provider complete and sign the [Limited Engagement Agreement](#).
- 2) Forward the Limited Engagement Agreement to the Compliance Specialist by submitting a ticket through the [BEN Helps Support Portal](#). The Compliance Specialist will review and return the signed Limited Engagement Agreement to the school or center.
- 3) If the individual is not an existing supplier, [request a Non-PO payee](#) be added as a new Non-PO supplier.
- 4) The service provider will complete the supplier registration and upload their W-9 in the secure portal. A proxy function is available if the service provider cannot access this portal and onboard themselves.
- 5) The school or center creates a non-PO Payment Request in Penn Marketplace. The signed Limited Engagement Agreement and any other supporting documents are uploaded and attached.

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

If the provider's services fall under the Limited Engagement agreement:

- 1) Have the service provider complete and sign the [Limited Engagement Agreement - Nonresident Aliens](#).
- 2) Forward the Limited Engagement agreement to the Compliance Specialist by submitting a ticket through the [BEN Helps Support Portal](#).
  - a) The Payroll Accountant reviews the registration documentation and verifies whether the nonresident alien can be paid for services.
  - b) The Compliance Specialist will review and return the signed Limited Engagement Agreement to the school or center.
- 3) If the individual is not an existing supplier, [request a Non-PO payee](#) be added as a new Non-PO supplier.
- 4) The service provider will complete the supplier registration and upload their W-8BEN and

passport in the secure portal. A proxy function is available if the service provider cannot access this portal and onboard themselves.

- 5) The school or center creates a non-PO Payment Request in Penn Marketplace. The signed Limited Engagement Agreement, I-94 U.S. Departure Record, and any other supporting documents are uploaded and attached.

#### **LE Providing Service Outside of the U.S.**

***If services fall within the LE guidelines, no additional approval is needed by GSS.***

- 1) Have the service provider complete and sign the [Limited Engagement Agreement-Global](#).
- 2) Forward the Limited Engagement agreement to the Compliance Specialist by submitting a ticket through the [BEN Helps Support Portal](#). The Compliance Specialist will review and return the signed Limited Engagement Agreement to the school or center.
- 3) For payment in U.S. dollars, [request a non-PO payee](#) be added as a new supplier.
- 4) The service provider will complete the supplier registration and upload their W-9 (for U.S. persons) or [Certificate of Foreign Source Income](#) (for non-U.S. persons), in the secure portal. Additional travel documents may be requested through the supplier registration process. A proxy function is available if the service provider cannot access this portal and onboard themselves.
- 5) The school or center creates a non-PO Payment Request in Penn Marketplace. The signed Limited Engagement Agreement and any other supporting documents are uploaded and attached.
- 6) For payments in foreign currency, submit a Foreign Currency (FC) Non-PO Payment Request in the Penn Marketplace along with the FC invoice, the signed Limited Engagement Global agreement, Certificate of Foreign Source Income, and any other supporting documents.

## [FAQs](#)

### **Q1. What are the consequences of noncompliance?**

Noncompliance with U.S. Department of Labor and IRS requirements can result in significant fines, penalties, and interest. We must also consider the reputational risk to the University. Penn is a responsible employer with a global reputation for excellence, and we each play a role in maintaining that reputation.

### **Q2. Is training available?**

Training on the classification process is available through [Workday](#). Log in with your PennKey and select **Learning** from the menu. Select "**Browse Learning Content**," then search for the "Individual Service Providers: Classification and Payment Training" course. New sessions will be posted there as they are scheduled.

### **Q3. My School/Center wants to hire a former instructor who has established a consulting business. Can we hire this person as an independent contractor?**

Those who conduct activities considered integral to an institution's core business should be classified as employees. In Penn's case, this means that individuals responsible for instructing students, assigning grades, mentoring, coaching, etc., should be classified as employees, not independent contractors. This classification is made regardless of whether they were previously employed by the University.

### **Q4. Can we hire a former staff member who has established a consulting business as an independent contractor?**

Generally, an individual previously employed by the University should be classified as an employee, not an independent contractor. The employer/employee relationship was established if a person worked at the University previously. 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, the school district initially 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.

### **Q5. Do we have to submit the Service Provider Questionnaire and Service Provider Evaluation Form for an honorarium?**

Generally, no, as long as this is a one-time-only activity and falls within the guidelines of a true honoraria. See the [Honoraria Payments page](#) for more information on requirements for the payment of Honoraria.

**Q6. Are the SPQ and SPE forms required for a limited engagement?**

No. If a service is a limited engagement, then the Service Provider Questionnaire and Service Provider Evaluation are not required.

**Q7. What agreement or contract can be used for a limited engagement?**

Three template agreements are available for limited engagements:

[Limited Engagement Agreement - U.S. Citizens and Resident Aliens](#)

[Limited Engagement Agreement - Nonresident Aliens](#)

[Limited Engagement Agreement- Global](#)

These forms are also posted to the [Individual Service Provider Classification](#) website.

**Q8. Can we pay for travel expenses?**

Yes. The University can pay travel expenses for service providers who the Compliance Specialist has determined to be independent contractors. A travel expense provision should be included in the contract and purchase order. The independent contractor should include these expenses on the invoice and should not be processed under the University's accountable plan. Payments for these expenses are considered taxable income. They will be included in the service provider's 1099-NEC earnings reported at the end of the calendar year. The independent contractor is responsible for maintaining all records related to its business expenses. However, the University reserves the right to request additional information regarding expenses 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.

**Q9. Is my school/center responsible for verifying that the individual has not performed the same or similar work elsewhere at the University during the calendar year?**

No, the school or center is not responsible for verifying that the individual has not done similar work with others at the University. However, it is possible to see if a vendor is already listed as an independent contractor in BEN Financials.

**Q10. Where can I find a contract template for an independent contractor?**

If the Compliance Specialist classifies your service provider as an independent contractor, a standard purchase order contract is available on the Procurement Services website.

**Q11. How will I know if I need an additional contract beyond the standard purchase order contract?**

Procurement Services will review the scope of work of each engagement, determine if an additional contract is needed, and guide in customizing the agreement. The standard purchase order contract is sufficient in most situations. Contact Procurement Services for assistance if an independent contractor provides their own contract.

**Q12. How is the process different for services provided outside the United States?**

The SPQ and SPE are still required, but Global Support Services (GSS) makes the classification determination. The [Global Support Services](#) website has additional guidance. Please consider whether the individual is registered as an independent contractor in the foreign country where they will provide services.

**Q13. Does it matter if the service provider is a U.S. citizen or resident or a resident of the foreign country where the services will take place?**

The individual providing the services should be legally able to provide the services in the foreign jurisdiction. In the case of a U.S. person providing the services in a foreign country, the individual should be registered as an independent contractor and have the appropriate visas and work authorizations to be in the country providing the services. In the case of a non-U.S. person providing services in their home country, the individual should be registered as an independent contractor with the appropriate authorities. In the case of a third-country national, the individual should be registered in the foreign country and have the appropriate visas and work authorizations to provide the services.