



## RUTGERS POLICY

**Section:** 40.2.5

**Section Title:** Fiscal Management

**Policy Name:** Consulting or Other Personal Services, Intellectual Property, Honoraria and Other Miscellaneous activities – Policies and Procedures for Payment

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**Policy:**

**CONSULTING OR OTHER PERSONAL SERVICES, INTELLECTUAL PROPERTY,  
HONORARIA AND OTHER MISCELLANEOUS ACTIVITIE – POLICIES AND PROCEDURES  
FOR PAYMENTS**

Introduction. This Section contains the University's policy concerning the engagement of consultants or others who provide independent personal services and sets forth regulations and procedures governing payments to individuals for consulting or other independent personal services, intellectual property, honoraria and other miscellaneous activities.

These regulations and procedures were developed to facilitate the efforts of faculty and staff and to ensure that the University is in compliance with a variety of state and federal laws and regulations, including specific withholding and reporting requirements issued by the Internal Revenue Service (IRS). They apply to payments made to United States citizens, resident aliens and nonresident aliens. If these procedures are not followed, the University may be exposed to severe monetary penalties for failing to properly document expenditures and report income and/or withhold income and employment taxes.

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Briefly stated, the University cannot treat personal service providers as independent contractors for income or employment tax purposes if in fact an employee/employer relationship exists. The University must enter into all consulting or other service arrangements at arms-length, and conflicts of interest must be avoided. The University is required to report amounts paid to individuals for independent personal services or intellectual property to the IRS on IRS Form 1099-MISC for payments made to United States citizens and resident aliens, and IRS Form 1042S for payments made to nonresident aliens. Finally, the University is generally required to withhold income taxes from payments of this type made to nonresident aliens.

**A. CONSULTING AND INDEPENDENT PERSONAL SERVICE ARRANGEMENTS**

**1. Policy**

- a) Generally, individuals performing services for the University for remuneration must be hired as employees of the University and paid through the University's payroll system. However, under certain circumstances it may be appropriate to engage a consultant or other independent personal service provider to perform specialized services for the University and pay that individual through the University's invoice processing system. The circumstances and procedures under which a consultant or other independent personal service provider may be engaged and paid are set forth in these regulations.

University employees are not prohibited by this policy from providing services to another department or an externally sponsored program of the University; however, under no circumstances may an employee of the University be paid for these services through the University's invoice processing system. When an employee does render authorized (sanctioned by the employee's home department) and compensable services to another department or an externally sponsored program of the University, the compensation must be paid through the University's payroll system either as an additional appointment, when that is appropriate, or as Other Pay.

- b) Any additional compensation paid to an employee rendering service to an externally sponsored program of the University must have the prior written approval of the sponsoring agency. For procedures regarding Other Compensation for staff employees, see Section 60.3.15 of the Procedures Manual. For procedures regarding faculty, consult the appropriate Provost's Office in Newark and Camden or the appropriate dean on the New Brunswick campus.

**2. Definitions**

- a) A consultant or independent personal service provider (IPSP) is defined as an individual, sole proprietorship, partnership, association or other non-incorporated entity engaged by the University to provide specialized advice or service for a fee but not as an employee. This type of individual is commonly referred to as an

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independent contractor by the IRS.

- b) The distinction between an employee and an independent contractor is important under state and federal tax laws because an employer must withhold income and employment taxes from an employee but generally not for an independent
- c) contractor. In addition, an employer must match an employee's social security contribution and pay unemployment taxes for an employee but not for an independent contractor. If an individual has been misclassified as an independent contractor, the University may be assessed for unpaid taxes, interest and penalties by taxing authorities.
- d) Generally (as defined by the IRS), an employee/employer relationship is deemed to exist when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he or she has the right to do so. If the University retains this level of control, the individual must be hired as an employee and not engaged as a consultant or IPSP.

An individual cannot be engaged as a consultant or IPSP simply because a department may not have a budgeted position available to support the worker or because it is an easier or less costly method to effectuate payment to the individual. An Employee/Independent Contractor Questionnaire is included in the "Request for Consulting or Independent Services" form (which can be obtained from the Office of Materiel Services) to facilitate the determination of whether or not a sufficient level of control exists to constitute an employee/employer relationship.

- e) Payments made to corporations for professional or other services are not governed by this policy. Corporate services must be contracted through University Procurement & Contracting using a University purchase order.

### 3. Authority and Responsibility

- a) As a general rule, only principal investigators, deans, directors, department heads and their superiors have the authority to engage consultants or other IPSPs. Employees who have the authority to engage, or approve the engagement of consultants or other IPSPs are required to certify that the individual is qualified to provide the proposed service and that the selection of the individual and the fee for the service is appropriate and reasonable.

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- b) Authorized employees must determine that an employee/employer relationship does not exist with the consultant or IPSP by completing the Employee/Independent Contractor Questionnaire printed on page 5 of the "Request for Consulting or Independent Personal Services" form.
- c) Authorized employees must be familiar and act in compliance with other University regulations and procedures concerning procurement (Section 20.1.11) and conflicts of interest (Section 60.5.8, 60.5.9 and 60.3.2), the New Jersey State Conflicts of Interest Statute and, when applicable, the specific terms and conditions of the sponsored program for which the consultant or IPSP is being engaged. Regarding the latter, sponsoring agencies generally require that consulting arrangements be approved in writing in advance of the engagement.

4. Required Documentation, Approvals and Processing

- a) Employees authorized to engage consultants or other IPSPs must complete both a "Request for Consulting or Independent Personal Services" form and a "Consulting Agreement" before any services can commence.

- (1) The "Request for Consulting or Independent Personal Services" form is required to document:

- (a) the classification as and justification for the use of a consultant;
- (b) the qualifications of the consultant;
- (c) the basis on which the consultant was selected; and,
- (d) the reasonableness of the proposed fee.

This preprinted, prenumbered, multipart form is also used to record a financial commitment for the pending services in the University's Financial Accounting System and eliminates the need for the completion of a purchase order. This form (RCIPS94) can be obtained from Materiel Services on the Livingston Campus. The Employee/Independent Contractor Questionnaire on page 5 of the form must also be completed in order to process the request.

- (2) The social security or taxpayer identification number of the individual providing the service must be indicated on the form when the individual is a United States citizen or a resident alien. Effective January 1, 2001, a social security number or a "new" individual taxpayer identification number will be required for a nonresident alien if the nonresident alien wishes to claim an exemption from withholding. See section 40.2.5 C for additional information concerning nonresident aliens.
- (3) The complete name and home or business address of the individual providing the service must be indicated on the form. The campus

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address of the office receiving the service is not acceptable.

- (4) The total cost of services indicated on the form must include an estimate of out-of-pocket expenses, if any, to be paid to the individual in connection with the services rendered. These expenses will be considered as part of the fee paid to the individual and will be reported as such to the IRS.
- (5) A fund approval number must be indicated on the form. The fund approval number is obtained by calling the business office, budget office or accounting office responsible for administering the account(s) to be charged for the cost of the services. This approval process will confirm that sufficient funds are available in the account(s) to cover the cost of the services.
- (6) Subcode 3110 - Professional Services must be used for engagements involving a United States citizen or resident alien. Subcode 3720 - Professional Services (NRA\*) must be used for engagements involving a nonresident alien.

\* Nonresident Alien

- (7) If the consulting request involves a fee of \$14,700 or more, the form must be reviewed and approved by the responsible dean, director or vice president and the appropriate Purchasing Department in New Brunswick, Newark or Camden. Both of these approvals must be obtained before the consultant or IPSP can be engaged. Purchasing will review the request for purposes of competitive bidding.
- (8) If a waiver of competitive bidding is sought, the requestor must attach a letter of justification (sole source or otherwise) to the form. If space permits, this justification may be included under Item 2 on the form. Purchasing will review the waiver request and indicate its approval by signing and returning the form to the Requestor. Purchasing will also obtain a Non-Collusion Statement (PC/NCS) from the consultant or IPSP.
- (9) If a waiver is not requested or not granted, Purchasing will inform the requestor that competitive bidding is required. The Request for Consulting or Independent Personal Services form must then be revised or replaced by the requestor with a new form to reflect the results of the competitive bidding. Purchasing will indicate its approval of this form by signing and returning the form to the Requestor.

- b) A written "Consulting Agreement or Contract" must be executed after the appropriate approvals are obtained on the Request For Consulting or

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Independent Personal Services form and before professional services commence. The agreement should, among other things, specify the services to be rendered, the time frame in which they are to be performed, and the amount and timing of the fee to be paid. Blank copies of this form (CA94) can be obtained from Materiel Services on the Livingston Campus:

- (1) A copy of both the Request for Consulting or Independent Personal Services form and the executed consulting agreement should be routed through the department's normal business channels to Invoice Processing for commitment. Subsequent payment requests will be processed in accordance with Section 40.2.5 A.5 Payment Procedures below.
  - (a) If for some reason it becomes necessary to expand the scope of services provided by the consultant or IPSP at additional cost, a new and separate authorization and consulting agreement must be completed. If the proposed cost of the supplemental engagement will cause the overall project cost to equal or exceed \$14,700, approval of the appropriate Purchasing Department is necessary.

#### 5. Payment Procedures

- a) Consultants or IPSPs are required to prepare and submit vendor invoices to the employee or department engaging the consultant or IPSP. The invoice must specify the name, address and social security number of the vendor, the nature and dollar amount of the services rendered, an itemization of out-of-pocket expenses, if any are to be paid, and the service period covered by the invoice. The invoice must be approved for payment (as evidenced by an original signature) by the employee authorized to engage the consultant or IPSP only after the services (or a proportional amount of the services) were satisfactorily performed. Finally, the reference number of the underlying Request for Consulting or Independent Personal Services form must be noted on the invoice before the invoice is submitted to Invoice Processing for payment.
  - (1) An exception to the process exists when the services are performed by a nonresident alien. In these situations, a special "Nonresident Alien Request for Payment" form must be prepared and attached to the vendor invoice. This form captures additional information required by the IRS, and should be prepared in accordance with Section 40.2.5 C below.
  - (2) In an effort to clarify the engagement and payment process of consultants or other IPSPs, a decision tree and process diagram

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is available and can be obtained by calling the Office of the University Controller.

- b) Procedures for Engagements of \$1,000 or Less: When the total cost of services is expected to be \$1,000 or less in any one fiscal year, the following abbreviated procedures may be used to engage and make payments to individuals for consulting or other independent personal services. These abbreviated procedures assume that the employee authorized to engage the consultant or IPSP has determined that an employee/employer relationship does not exist with the individual, that the individual is qualified to render the service, that the fee is reasonable, that no conflicts of interest exist with the individual and, if applicable, the engagement is permitted under the terms and conditions of the sponsored program. Also, the authorized employee should provide the individual with a written statement of work (in lieu of a consulting agreement) in order to avoid any misunderstanding about expected outcomes.
- (1) Obtain a vendor invoice from the consultant or IPSP after the services (or a proportional amount of the services) were satisfactorily performed. The invoice must specify the name, address and social security number of the vendor, the nature and dollar amount of the services rendered, an itemization of out-of-pocket expenses, if any are to be paid, and the service period covered by the invoice.
  - (2) Complete the Request for Payment form as outlined in Section 40.2.5.5 Payment Procedures for payments made to United States citizens and resident aliens (subcode 3110) or Section 40.2.5 C Payment Procedures for payments made to nonresident aliens (subcode 3720).
  - (3) Upon completion, attach the vendor invoice to the Request for Payment form and submit them for processing through the department's normal business channels for funds approval and then to Invoice Processing for payment.

**B. INTELLECTUAL PROPERTY, HONORARIA AND OTHER MISCELLANEOUS ACTIVITIES**

1. Patent Assignments.

The University from time to time makes payments to inventors for patent rights assigned to the University under the University's Patent Policy (Section 40.2.5). Payments made to individuals under this policy should be processed using the University's Request for Payment form for United States citizens and resident aliens, and the Nonresident Alien

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Request for Payment form for nonresident aliens. Payment requests for United States citizens and resident aliens should be prepared in accordance with Section 40.2.5 B.5 Payment Procedures below using subcode 5110 - Patent Assignments. Payment requests for nonresident aliens should be prepared in accordance with Section 40.2.5 C below.

2. Copyright Royalties.

The University from time to time makes royalty payments to artists and authors for the right to publish their creative works. Royalty payments should be processed using the University's Request for Payment form for United States citizens and resident aliens, and the Nonresident Alien Request for Payment form for nonresident aliens. Payment requests for United States citizens and resident aliens should be prepared in accordance with Section 40.2.5 B.5 Payment Procedures below using subcode 3130 - Royalties. Payment requests for nonresident aliens should be prepared in accordance with Section 40.2.5 C below.

3. Honoraria.

- a) An honorarium is defined as a payment for personal service on which custom or propriety forbids a price to be set. Typically, honoraria are paid to guest lecturers or experts for brief appearances at the University. Service arrangements providing for more extensive involvement on the part of an expert, such as a program review requiring the preparation of a written evaluation, are to be treated as consulting arrangements as provided under Section 40.2.54 A above. Honorarium payments made to University employees, if and when appropriate, must be processed through the University's payroll system. Honorarium payments made to non-employees should be processed using the University's Request for Payment form for United States citizens and resident aliens, and the Nonresident Alien Request for Payment form for nonresident aliens. Payment requests for honoraria paid to United States citizens and resident aliens should be prepared in accordance with Section 40.2.5 B.5 Payment Procedures below using subcode 3120 - Honoraria. Payment requests for honoraria paid to nonresident aliens should be prepared in accordance with Section 40.2.5 C below.
- b) If an honorarium payment is being made to a guest lecturer or expert for a brief visit, the individual's honorarium fee may be treated separately from his/her expense reimbursement; it is not necessary to combine both of these components into the honorarium fee. If the honorarium is separate from the travel reimbursement, the honorarium payment must be made in accordance with the preceding paragraph, and the travel reimbursement must be in accordance with the University's travel policy (Section 40.4.1).

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- c) If the recipient of the honorarium prefers not to separately account for and report (on a TABER\*\*) traveling expenses, this amount, or an estimate thereof, may be included in a single honorarium payment.

4. Miscellaneous Activities.

Other miscellaneous activities include: human subject fees, participant support costs, prizes and awards, and performance fees paid to non-employees. Payments for miscellaneous activities should be processed using the University's Request for Payment form for United States citizens and resident aliens, and the Nonresident Alien Request for Payment form for nonresident aliens. Payment requests for miscellaneous activities paid to nonresident aliens should be prepared in accordance with Section 40.2.5 C below. Payment requests for miscellaneous activities paid to United States citizens and resident aliens should be prepared in accordance with Section 40.2.5 B.5 Payment Procedures below using the following subcodes:

\*\* Travel and Business Expense Report

- a) 3140 - Human Subjects. Fees paid to persons participating in surveys, experiments and the like. So as not to impede confidential scientific research, social security numbers will not be required on the payment of individual human subject fees under \$600.
- b) 3340 - Prizes and Awards. Payments for prizes or awards paid to students and non-employees. Prizes and awards paid to employees are generally considered taxable wages and must be paid through the University's payroll system.
- c) 36XX - Participant Support Costs. Payments for items such as stipends or subsistence allowances, travel and registration fees paid to participants or trainees (but not employees) in connection with meetings, conferences, symposia or training projects. These subcodes are to be used only with accounts beginning with the prefix 4-2 (grant or contract accounts).
- d) 3190 - Performance Fees. Fees paid to artists, entertainers and athletes for performances sponsored by the University. Performance fees paid to University employees, if and when appropriate, must be processed through the University's payroll system.

5. Payment Procedures

- a) As provided for in Sections 40.2.5 A and B above, the University's Request for Payment form is to be used for making payments to United States citizens and resident aliens. In order to properly document the nature of the payment and capture the information required by the IRS on Form 1099-MISC, the payment

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request must be prepared to include the following information:

- (1) the complete home or business address of the person receiving payment (the campus address of the office to which the service is being provided is not acceptable);
  - (2) the social security number of the individual receiving the payment;
  - (3) a complete description of the nature of the payment and the period covered by the payment. If and when appropriate, attach supporting documentation (i.e., contracts, vendor invoices, etc.) to the payment request;
  - (4) the account number and proper subcode to be charged; and,
  - (5) the authorized signature for the department requesting payment.
- b) Upon completion, submit the Request for Payment form through the department's normal business channels for funds approval and then to Invoice Processing for payment.

### C. PROCEDURES SPECIFIC TO NONRESIDENT ALIENS

Introduction: Nonresident aliens must pay United States income tax on the income they receive for patent assignments, royalties and consulting or other independent personal services made, earned or performed in the United States. Unless a withholding exemption is claimed as outlined below, this income is subject to a 30% tax which the University is required to withhold upon payment. In addition, the University is required to report this income and the amount of income tax withheld to the IRS at the end of each calendar year on Form 1042S. Accordingly, in order to capture the information necessary to satisfy these requirements, a special Nonresident Alien Request for Payment form must be used for making payments to nonresident aliens for patent assignments, royalties and consulting or other independent personal services made, earned or performed in the United States.

In certain cases, payments may have to be made to a nonresident alien for services performed outside the United States. In these instances, the payments are not subject to United States income tax and do not have to be reported to the IRS. These payments should be processed on a regular Request for Payment form using subcode 3780 - NR Payments Outside United States. A social security number is not required, but the form must clearly indicate in what country the work was performed.

#### 1. Payment Procedures

- a) The Nonresident Alien Request For Payment form must be used for payments

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made to nonresident aliens for patent assignments, royalties and consulting or other independent personal services made, earned or performed in the United States. This form can be obtained from University Accounting, Administrative Services Building (ASB) Room 300, Busch Campus. The nonresident alien payment request must include the following information:

- (1) the complete home or business address of the person receiving payment (the campus address of the office to which the service is being provided is not acceptable);
  - (2) effective January 1, 2001, the social security number or the individual taxpayer identification number of the individual receiving the payment will be required if the nonresident alien wishes to claim a withholding exemption as outlined below. If an exemption is claimed, indicate that in the space provided and attach the appropriate IRS exemption form;
  - (3) a complete description of the nature of the payment and the period covered by the payment, unless a vendor invoice is attached to the request as required under Section 40.2.5.A.5 Payment Procedures. For patent assignments, royalties, honoraria and other miscellaneous activities, if and when appropriate, attach supporting documentation (i.e., contracts, etc.) to the payment request;
  - (4) the number of days that service was performed in the United States;
  - (5) the account number and proper subcode (see below) to be charged; and,
  - (6) the authorized signature for the department requesting payment.
- b) Upon completion, the Nonresident Alien Request for Payment form must be sent to University Accounting for approval and calculation of any withholding before it is sent to Invoice Processing for payment. It should be sent to the Nonresident Alien Desk, University Accounting, ASB Room 300, Busch Campus.

2. Subcodes for Nonresident Aliens

In order to facilitate reporting to the IRS on Form 1042S, the subcodes used for classifying payments for patent assignments, royalties and consulting or other independent personal services to nonresident aliens are distinct from those used for United States citizens. The subcodes for nonresident aliens are as follows:

3720 – Professional Services (NRA). Commissions and fees for services provided by external consultants or other independent personal service providers.

3730 - Honoraria (NRA). Payments to outside experts such as professors,

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authors, etc. for guest lectures, appearances or other brief educational services provided to the University.

3740 – Patent Assignments and Royalties (NRA). Payments to persons who are entitled to distributions of income earned on intellectual property owned or assigned to the University under patents, copyrights and trademarks.

3760 – Participant Support Costs (NRA). Payments for items such as stipends or subsistence allowances, travel and registration fees paid to participants or trainees (but not employees) in connection with meetings, conferences, symposia or training projects. These subcodes are to be used only with accounts beginning with the prefix 4-2 (grant or contract accounts).

3770 – Performance Fees (NRA). Fees paid to external artists, entertainers and athletes for performances sponsored by the University.

3790 – Prizes and Awards (NRA). Payments for prizes and awards paid to students and non-employees.

3. Withholding Exemptions

Nonresident aliens may be able to claim an exemption from the income tax withholding requirement in one of two ways:

- a) if the income is effectively connected with a trade or business in the United States, then IRS Form W-8ECI - Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected with the Conduct of a Trade or Business in the United States can be filed with the University. In this case, the individual is subject to the same graduated income tax rates and regulations that apply to United States citizens.

A social security number for the individual is required. Departments should be aware that when this exemption is claimed, the nonresident alien is required by the IRS to file a 1040NR tax return for the year and to pay estimated income taxes quarterly.

OR,

- b) if the income is not effectively connected with a United States trade or business, the individual can still be exempt from the 30% income tax under a tax treaty. If the individual is a resident of a country that has a tax treaty with the United States, and that treaty provides for an exemption of income tax on the type of income being paid, the individual can file with the University a copy of IRS Form 8233 - Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual. Effective January 1, 2001, a social

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security number or Individual Taxpayer Identification Number (ITIN) will be required for this exemption. The ITIN is intended for short term, nonresident alien visitors who do not have social security numbers. The ITIN can be obtained by filing Form W-7 "Application for IRS Individual Taxpayer Identification Number" with the IRS, along with either an original birth certificate, driver's license, passport or immigration document.

- (1) The exemption forms and the W-7 form can be obtained from an IRS office or the Nonresident Alien Desk located in ASB, Room 300, Busch Campus. If provided with an exemption form by the individual, it is the responsibility of the department to attach the form to the payment request. In the absence of such form, tax will be withheld at the 30% rate. Individuals with questions regarding their tax status should seek professional tax advice.

In summary, the University's policy regarding the withholding of income taxes on payments made to nonresident aliens for royalties earned and independent personal services performed in the United States are as follows:

- (1) Payment request with no attachments: Tax of 30% will be withheld from the income after giving effect to one exemption (current IRS rate in effect) per day. A social security number or individual taxpayer identification number is required, unless one has not been assigned to the individual.
- (2) Payment request with IRS Form W-8ECI: No tax will be withheld since the income is effectively connected with a trade or business in the United States. A social security number must be provided or a copy of Form SS-5 attached to show that the individual has applied for a social security number.
- (3) Payment request with IRS Form 8233: No tax will be withheld where the individual qualifies for exemption under an existing tax treaty. A social security number or individual taxpayer identification number is required, effective January 1, 2001, for this exemption.

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