

Payments to Nonresident Alien Independent Contractors/Honorarium Payments

A nonresident alien independent contractor is a foreign visitor who provides a service to the University but who is not an employee. Services are defined as lecturing, consulting, or other activities to be performed by a nonresident alien as outlined in a specified contract or agreement.

Determining payment eligibility to non-resident aliens is very complex. Each individual's situation is different. The more information that can be collected prior to the individual's arrival in the US, the easier the issue of payment determination can be resolved. The fact that a department has the funds and wants to make an honoraria payment is not the deciding factor. Loyola is required to make only authorized payments. Before bringing in a visitor for a lecture you should contact Mary Theis in the Office of International Programs or Scott St.Pierre in General Accounting if you plan to pay the visitor an honorarium.

It is the responsibility of the sponsoring department to collect all the required paperwork from their prospective guests.

The following documents are needed:

- Foreign National Information Form
- Passport Information page
- I-94 (card inside passport)
- Visa Copy (If under a visa waiver program they will not have a visa)
- Statement certifying that they are abiding by the 9/5/6 honoraria rules (if applicable)

After the department has collected the required documentation they should send the forms to Maria Araque in General Accounting. General Accounting will assess the individual's tax status and notify the department if any tax withholding is necessary on the payment or if the individual is eligible for a tax treaty exemption.

Generally, the withholding rate for independent contractors is 30% for Federal taxes unless a tax treaty exists between the U.S. and the nonresident alien's tax residence.

In order for an independent contractor to qualify for a tax treaty exemption they must have a Social Security Number or an ITIN at the type of payment and they must also sign IRS Form 8233, Exemption from Withholding on Compensation for Independent Personal Services of a Nonresident alien individual. Form 8233 is generated once the documents above have been given to General Accounting for review.

The 30% federal tax withholding will always apply to nonresident alien independent contractors who do not possess a Social Security number or a Tax Payer Identification number (ITIN), or for individuals who refuse to fill out the required paperwork in order to be paid if they do possess a Social Security Number or ITIN.

It is possible to pay visiting lecturers and contractors who are in the United States on what is commonly called a Visitor's Visa. The University can pay a Visitor's Visa-holder both an honorarium and reimburse for incidental expenses such as travel, meals, and hotel stay as long as their service to the Loyola University Chicago *lasts no longer than 9 total days* and as long as the Visitor's Visa-holder *has not accepted honoraria and/or reimbursements for incidental expenses from more than five institutions of higher education, nonprofit organizations affiliated with higher education institutions, or governmental organizations in the last 6 month period*. This is referred to as the 9/5/6 honorarium rules.

If the international lecturer or contractor is on either a B-1 or WB Visa and has received honoraria or reimbursements for expenses from more than five institutions or nonprofits within the previous 6 month period, then the international guest worker is only eligible to be reimbursed for incidental expenses such as travel, meals, and hotel. Loyola University Chicago *cannot pay any additional fees or honoraria for B-1 or WB Visitor's Visa-holders in this situation*.

The following are common examples of payment situations:

Example 1: Visitor from Germany on a visa waiver coming to give a Lecture at the University for one day. The visitor does NOT have a Social Security or ITIN number. The department has agreed to pay the individual an honorarium and reimburse expenses: Is this allowed?

Answer: Yes, they can pay the individual assuming the individual is following the 9/5/6 honorarium rules. However, since they don't possess a SS#/ITIN number they must have 30% federal tax withheld on their payment. As long as the individual can provide receipts for their travel expenses they can be reimbursed with no tax withheld.

Follow up question: What happens to the tax the individual pays? Can they ever get it back?

Answer: It depends whether or not the individual is from a country that has a tax treaty with the United States that exempts income from self-employment. If they are from a country with a treaty, they would need to apply for an ITIN on a Form W-7 and file a tax return in the following year to receive a refund. Loyola does not process Form W-7 applications.

Example 2: Visitor from France, coming on a B1/B2 visa to give a Lecture at the University for 5 days. The visitor does have a Social Security number. However, they have told us that they have spoken at 5 other Universities this past year within the past 6 months. The department has agreed to pay the individual an honorarium and the lecture has already taken place at Loyola. Is payment to this individual allowed?

Answer: No, due to the fact that the individual has not met the 9/5/6 honorarium rules Loyola is unable to issue payment for their services.

Example 3: Visitor from France on a visa waiver coming to give a lecture at the University. The visitor does have a Social Security Number. They will only speak for one day; they have filled out the foreign national information form and signed the 9/5/6 certification statement. The department would like to pay them an honorarium. Is this allowed?

Answer: Yes, once General Accounting has received the foreign national information form and certification statement and has reviewed the documentation, a Form 8233 will be issued to the individual. The Form 8233 must also be signed in order to receive the tax exemption.

Honorarium Payments to those not in B-1/B-2 or Visa Waiver Status

J Exchange Visitors

Department of State regulations give permission for J-1 scholars to give occasional lectures or consultations and to be paid wages or other remuneration (honorarium) provided they can obtain a letter of authorization from their J-1 Program Sponsor (the institution where they are working or being hosted) giving them permission to do such. They must already be in the US on a J1 visa.

J-1 Scholars at other institutions should consult with their J-1 Program Sponsor to determine what they need to request such permission to be paid honoraria by Loyola.

H-1B Temporary Workers

We cannot pay honoraria to H-1B visa holders from other institutions. Likewise, those at Loyola holding H-1B visas cannot receive honoraria from other institutions. They can perform such activities as long as it is incidental to their employment at the other institution but the H-1B visa requires that there must be no monetary gain or other remuneration for the activity (i.e., NO honoraria payment). We also cannot pay their sponsoring program or institution for their services.