



Revised Independent Contractor Policy

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Agenda

- Policy History
- Key Elements
- Policy Overview
- Responsibilities for Compliance
- Use of the Independent Contractor Questionnaire (ICQ)
- Three-Part Legal Test
- Record Retention
- Next Steps
- Contacts
- Pop Quiz



Policy History

- Initial Independent Contractor Policy released in 2010
- January 2016 – class action lawsuit filed by massage therapists at HUHS
 - Discovery revealed variations across Harvard in IC classification procedures and practices
 - Existing IC policy focuses on federal law rather than the more restrictive Massachusetts test
 - Degree of risk is potentially substantial across University given high number of IC engagements
- September 2017 - Working group comprised of OGC, HHR, HR, Finance, RMAS and Operations formed to review current state and identify challenges and gaps
- March 2018 – class action lawsuit was settled. Under the terms of the Settlement:
 - Approximately 20 massage therapists and acupuncturists were reclassified as employees
 - University affirms its commitment to properly classify workers who provide services to the University
 - University will review and revise current IC policy to reflect both Massachusetts and U.S. law and support managers and HR staff in making correct classifications
- October-November 2018 - Working Group revised IC Policy statement and Independent Contractor Questionnaire (ICQ) and related materials and was vetted with the Financial Policy and Review Committee (FPRC), HR Deans & Directors
- Updated Policy rolled out July 1, 2019



Key Elements

- 2019 Policy clearly sets forth legal test for appropriate IC classification
- Mandates that review and approval of IC classification must occur *before* IC is retained, any services are rendered, and/or payment made
- Clarifies roles and responsibilities for local hiring department or unit, HR and accounts payable approvers; specifies required documentation, review process, and approval steps needed before any services are performed
- Clarifies that compliance is the obligation of the local department or unit
- Revised ICQ reflects Massachusetts law and is easier to complete and analyze
- Identifies lower risk engagements as exceptions to ICQ requirement (but must still comply with the law).



Policy Overview

Policy Statement

- Presumption of employee status unless 3-part Massachusetts IC test is met
 - This applies regardless of where the work is being performed (U.S. or Internationally).
- A worker or department's preference **is not relevant** to the classification determination
- All proposed IC engagements must be reviewed and approved as set forth in the Policy before engaging an individual
- Services cannot be rendered until an ICQ has been completed and approved and a contract signed

Reasons for the Policy

- Harvard must comply with Massachusetts and federal law
 - Wage and hour requirements (including overtime)
 - Tax withholding requirements (income tax, social security and Medicare)
 - Workers' compensation, unemployment and other benefits



Policy Overview

Risks if Schools or Units Fail to Comply

- Financial liability - including taxes, workers' compensation, unemployment benefits as well as fees and fines (which often include treble damages) assessed by both the federal and the state which must be paid by the hiring department
- Civil and criminal liability – willful violations can incur fines or imprisonment
- Reputational liability
- Required registration of the University in other countries when work is performed abroad
- Other risks

Who Must Comply

- All Harvard University schools, tubs, local units, Affiliate Institutions (e.g., Harvard Global, Wyss Institute, etc.), Allied Institutions (e.g., HUP, Arnold Arboretum, etc.) and University-wide Initiatives must comply. Harvard-affiliated Hospitals are not considered affiliate institutions.

Responsibilities for Compliance

Local Hiring Department or Unit

- Determine if the IC Policy applies and initiate any required procedures, including completion of ICQ
- Obtain proper review and approval before contract is signed and before any services are performed

Local HR Office

- Review proposed IC engagements, including signing ICQ, and approve engagement as IC if three-part test is satisfied
- Ensure that departments are familiar with, and receive training regarding, IC policy requirements

Local Department or Unit's Accounts Payable Approver

- Ensure that required documentation that supports IC classification is completed before a supplier is created in AP system or payment issued (signed contract, approved ICQ or written statement of why not required, and an invoice)

Individual schools and units may have more restrictive policies or internal processes; contact your tub human resources or finance department for more information.

See [IC Process Workflow](#)



Three-Part Legal Test Requirements

- Under Massachusetts law, every individual receiving payment for services to the University is **considered to be an employee** of the University unless all of the factors in the 3-part Massachusetts legal IC test are satisfied
 - Massachusetts IC test is among most restrictive – more restrictive than IRS test with the familiar “20 questions” analysis
- The Massachusetts IC 3-part test (all 3 prongs must be met)
 - Part 1: The worker must be free from Harvard’s control and direction in connection with the performance of the service, both under a contract for the performance of the service and in fact
 - Part 2: The service performed by the worker must be outside the usual course of Harvard’s business, and not a regular and continuous part of business operations
 - Part 3: The worker must be customarily engaged in an independently established trade, occupation, profession, or business of the same type as the service being performed for Harvard

Mass. Gen. Laws Ch. 149, sec. 148B



Part 1: Free from Harvard's Control and Direction

- The worker must be free from Harvard's control and direction in connection with the performance of the service, both under a contract for the performance of the service and in fact
 - Duties are carried out with minimal instruction/supervision or training from Harvard – IC has independent control and direction over the work
 - Individual performs functions using an approach of their own choosing
 - Individual sets their own hours
 - Determines the appropriate tools and methods to use
 - Uses their own materials and supplies
 - Determines when and where to work (within general parameters)
 - Individual determines how much work is needed to perform the project for which they have been retained
 - Some indicia - Individual is being paid a flat fee by the job or project rather than an hourly rate



Part 2: Outside Usual Course of Business

- The service performed by the worker must be outside the usual course of the employer's business
 - The service performed by the individual must be incidental to the operations of the School, local unit, or department rather than a necessary or integrated component of operations
 - Are the services a necessary or integrated component of operations?
 - Does this unit typically use Harvard employees to perform these services?
 - Will the individual supervise Harvard employees?
 - This assessment should consider whether the service is a regular and continuing part of the operations of the School, local unit, or department engaging the worker
 - Duration of engagement a significant factor - Longer engagements (e.g. that exceed 6 months) are more likely to fail this prong of the test, because the services performed may be more likely to be part of the regular and continuing operations of the School, local unit, or department.
 - Whether the services will be provided over an open-ended period of time, rather than a discrete or defined period.



Part 3: Established Trade

- The worker must be customarily engaged in an independently established trade, occupation, profession, or business of the same type as the service being performed for Harvard
 - Individual must be operating an independent business enterprise which offers its services to other clients or customers
 - Individual must be capable of performing the services for other entities and should not be solely dependent on Harvard for work
 - Fact that work is performed off-site not relevant – test is whether individual is regularly engaged in offering such services to others
 - Projects that require individual to devote a substantial majority of their working time to Harvard, precluding work for others, should be limited in duration
 - Some indicia - website, business email address, business card, business tax ID number

When to Complete an Independent Contractor Questionnaire (ICQ)

An independent contractor questionnaire (ICQ) must be completed regardless of where the work is being completed (including those performing work inside and outside of Massachusetts) and prior to engaging the individual to start work.

- For work outside of the U.S., *Harvard must follow the rules and regulations based on the country in which the work is taking place*. These provisions may be different than MA law and are occasionally more stringent (Europe) or entail tax withholdings on payments to contractors. The local school or unit's HR office can work with Global Support Services (GSS) to determine international IC status.
- **It makes no difference what the payment is called (honoraria or service payment) in following this policy.**

An ICQ is required for the following engaged to perform a service for Harvard.

- An individual engaged to perform a service for Harvard (see [exceptions](#))
- Single-Employee Limited Liability Company (LLC), Unincorporated or Incorporated Company
An ICQ is required when a company is a single-employee company (even if it subcontracts additional workers)
- Third-Party Entity that Act as Freelancer Marketplace (W2 no ICQ)
If the third-party entity does not go through a formal classification process but rather acts as a freelancer marketplace (an intermediary which advertises and coordinates individuals selling their services such as Upwork, freelancer.com or TaskRabbit) an ICQ must be completed

Generally, based on a third-party's structure, Parts 1 and 3 of the three-part legal test are met; however, part 2 – usual course of business must be reviewed and classified appropriately by HR.

Note: Buy to Pay has quick Independent Contractor Form that can help determine if an ICQ must be completed.



IC Questionnaire Exceptions Process

Under limited circumstances, the formal completion of an IC Questionnaire is not required

- The local department or unit must still confirm that the classification satisfies the three-part legal test
 - A written contract / agreement is still required
 - The local department or unit must provide the accounts payable approver with a written exception attestation form or statement of why a completed IC Questionnaire is not required
- 1) Guest Speaker or Guest Lecturer receiving an honorarium or speaking fee for a one-time speaking engagement (performers/musicians also fall into this category). This exception cannot be used for individuals teaching or co-teaching a substantial portion of a course, those listed as instructors in the course catalog, or those who hold a Harvard appointment for their teaching role.
 - 2) Single, Short-Term Engagements for Less than \$3,000 - An ICQ is not required if the engagement satisfies the three-part Independent Contractor test; the engagement will last no longer than three months (90 calendar days); AND total payments to the IC will not exceed \$3,000.

Individual schools and units may have more restrictive policies or internal processes; contact your tub human resources or finance department for more information.



IC Questionnaire Exceptions Process

Guest Speaker or Guest Lecturer receiving an honorarium or speaking fee for a one-time speaking engagement (performers/musicians also fall into this category)

- An ICQ is not required for an individual receiving an honorarium or speaking fee for a one-time speaking engagement (performers/musicians also fall into this category).
 - Be sure the correct performer object code is used based on the location of the activity. See [Summary of Performer Object Codes](#)
- This exception cannot be used for individuals teaching or co-teaching a substantial portion of a course, those listed as instructors in the course catalog, or those who hold a Harvard appointment for their teaching role.
- Schools may use the [model speaker engagement](#) form as the agreement.

Individual schools and units may have more restrictive policies or internal processes; contact your tub human resources or finance department for more information.

IC Questionnaire Exceptions Process

Single, Short-Term Engagements for Less than \$3,000 - An IC Questionnaire is not required if

- the engagement must satisfy the three-part IC test;
- the engagement will last no longer than three months (90 calendar days); AND
- total payments to the IC will not exceed \$3,000.

Note - If the local department or unit renews, extends, or enters into a subsequent engagement with the IC within a 12-month period, then then a completed ICQ is required. We are suggesting the 12-month period be based on a calendar year not fiscal year.

Individual schools and units may have more restrictive policies or internal processes; contract your tub human resources or finance department for more information.



Where Policy Does Not Apply and an ICQ is not Required

- The Policy does not apply and an ICQ is not required for the following performing services for Harvard
 - Suppliers/vendors with more than one employee whose personnel are classified as employees (e.g., Cambridge Landscaping, AllSource)
 - Human Subject Payments (See [Human Subject Payments Policy](#))
 - When the University is contracting with a third-party entity (e.g., managed services provider, temp agency, payrolling service, IT staffing firm) to obtain personnel who are classified by those firms as employees or contractors to perform services
 - Schools and departments enrolled in the [Contingent Workforce Managed Services Program](#) (Fieldglass/DZConneX (formerly Yoh) or who use the suppliers managed in the Yoh Managed Service Program meet the IC classification requirements of a managed services provider

If an Individual is Classified as an IC – Local Hiring Department

Completing Contract / Agreement

- Follow local school or unit requirements around contracts and the contract review process. Be sure that any IC contract contains the following language: **[Consultant/Contractor/supplier] shall be an independent contractor, free from Harvard's direction and control, and not an agent or employee of Harvard.**
- The Office of the General Counsel has model contracts available [here](#). Strategic Procurement (SP) has additional master service agreement templates as well as a contract checklist which may be found on their [internal website](#).
- Be sure to follow any additional requirements which may apply based on funding source or contract threshold. For example, the use of debarment language with federal funds or bid requirements based on purchasing procedure dollar thresholds. See [Procurement Policy](#) or [Procure to Pay Manual](#).
- Be sure to note in the contract or communicate to ICs the requirement that they follow Harvard Policy for any travel or out-of-pocket reimbursements, as well as requirements related to the Massachusetts [Performers Tax](#) and tax withholding for nonresident aliens (i.e., foreign nationals) for work completed inside of the U.S. See [Performer Tax](#) Information.
- Based on the type of service, location of service and individuals tax residency status, additional taxes may be withheld.



Once Work has been Completed – Local Hiring Department & Approvers

- After the work has been completed to the hiring department or unit's satisfaction, the IC must submit an invoice to the school or unit for processing. Purchasers and requestors should confirm that the required documentation has been completed (ICQ and contract) and review the invoice following the Responsibilities of Purchasers, Preparers and Approvers (ROPPE) policy.
- Payment through B2P is the only acceptable method of payment for independent contractors. Harvard must not pay for IC services via out-of-pocket or by using a Harvard Corporate Card or PCard
- Collect required documentation to set individual up as a supplier
- Review and prepare invoice for payment
 - Invoices should be itemized
 - Be sure to note if work was completed within or outside the U.S.
 - Use the appropriate object code based on the services completed
 - Use object codes 8690 or 8692 for ICs who earn income connected with performances in Massachusetts. Use 8691 for ICS who earn income connected with performances outside of Massachusetts. See Performers Tax for additional information.
 - Other professional services (i.e., not performances) are generally processed within the M784 object code range though other object codes may also be appropriate.
 - True, non-performance honoraria use object code 8694. See Performers Tax for additional information.



Once Work has Been Completed - Approvers

- Accounts Payable Approver Responsibilities
 - When submitting the invoice for approval, the hiring department or unit must have completed the required documentation listed below and the approver is responsible for ensuring that the required documentation has been completed before any payment is issued
- Required Documentation
 - A completed questionnaire (ICQ), signed by HR, approving the classification of the individual as an IC or the IC Questionnaire Exception Attestation Form or language that confirms the contractor meets IC Policy Exceptions
 - The completed ICQ may be submitted with the invoice or evidenced in some other way. Some schools or units may use Buy-to-Pay Contract Management Tool as an ICQ and contract management tool or have other internal processes for tracking that the ICQ has been completed
 - An itemized invoice
- Approvers must review the documentation and invoice following the [Responsibilities of Purchasers, Preparers and Approvers](#) (ROPPA) policy.
- If the approver does not receive or have evidence of the above required documentation, the payment cannot be processed.



B2P Tips and Tricks – Payment Request (PR)

- All payments to foreign entities and individuals are placed in a queue for tax review.
- Make sure the type of transaction matches the description and invoice details (e.g., don't select "Other" as type of transaction, but note "commencement guest speaker" in the description and attachment is an award letter for a prize).
- Attach an invoice, in lieu of form, agreement, email correspondence.

Select the help button
for additional
information.

Transaction Information ?

Type of Transaction (Suggested Object Code)

1

- ☐ Copyright/Royalty/Licensing Fees (8570)
- ☐ Donation (8450/8454)
- ☐ Fellowship/Grant (6460-Students/6455-NonStudents)
- ☒ Honoraria/Performer/Lecturer: Inside Mass (8690/8692/8694)
- ☐ Honoraria/Performer/Lecturer: Outside Mass (8691/8694)
- ☐ Prize/Award (6462-Students/8693-NonStudents)
- ☐ Refund
- ☐ Other (Not Identified Above)

More Information

Description

2

<https://oc.finance.harvard.edu/ap-forms>

254 characters remaining expand clear

Attachments

3

Add Attachments

Size Date

Invoice Information

Supplier Inv #

*If the supplier has provided an invoice number, enter the invoice number as it appears. Exclude: spaces, the word 'invoice', and do not use # as a prefix.
If you do not have a supplier invoice number you must use the following format: SUPPLIERNAME+DD+MMM+YY (e.g. JOHNHARVARD03APR20) for an invoice from supplier John Harvard dated 4/30/20. Exclude lower case, special characters, dashes, and spaces*

Invoice Date

mm/dd/yyyy

Invoice Amount

Location of activity

4

Please select...

For more information on Location of Activity [click here](#)

Section	Description
1 Type of Transaction	<ul style="list-style-type: none">• Select the most appropriate type of transaction.• Only select "Other" if the transaction does not match one of the options listed (e.g., loan forgiveness, human subject payment, consulting, etc.).• Selecting "Other" can delay review and processing since it goes into a larger queue for tax review.
2 Description	Put in a detailed business purpose/description (what, where, when, why). Note the location of the activity/service.
3 Internal Attachments	Attach an invoice or in lieu of form. This documentation shows what the payment is for and why the requestor is initiating the transaction. Documentation can be an invoice, in lieu of form, agreement, contract, or correspondence that documents the business purpose (who, what, where, when, why, how).
4 Location of Activity	Where is the service being performed, property being rented, or the location where fellowship income is expected to be utilized.

B2P Tips and Tricks – Attach ICQ or Other Documentation

When checking out:

Select “Yes” in the dropdown on the requisition if an ICQ was required.

If an ICQ is already in the Contract Repository TCM, just note an internal comment referencing the TCM Contract Number with the ICQ document can be found to make the approvers aware if it.

Internal Notes and Attachments		
ICQ Support Documentation Attached	Yes	
Vendor Justification Form Provided	<i>no value</i>	
Debarment Form Provided (For Federal Contracts ≥ \$35K)	<i>no value</i>	
Internal Attachments		Date
		Add
2019JUL01 ICQ Independent Contractor Questionnaire.pdf	3/7/2022	...



B2P Tips and Tricks – Noncatalog Order

- All payments to foreign entities and individuals are placed in a queue for tax review.
- Make sure the type of transaction matches the description and invoice details (e.g., if the invoice is for consulting in Spain, be sure to note consulting in Spain in the description).
- Select the location of activity to speed the tax review process.

The screenshot shows a requisition form with a sidebar on the left containing the following items: Requisitions, General, Ship to & Bill to, Accounting Codes, Internal Notes and Attachm..., External Notes and Attach..., Special Handling & AP, Ad Hoc Approver, Supplier Information, Final Review, Requisition Approvals, Comments, Attachment Overview, and PO Preview. The 'Ship to & Bill to' item is circled in red. The main form area has two sections: 'Ship To' and 'Bill To'. The 'Ship To' section has a 'Shipping address' field with the value: ATTN Name/Department Karen Kittredge, Building/Room 3rd Floor - Room 336, 1033 Massachusetts Ave, Cambridge, MA 02138-0000, United States. The 'Bill To' section has a 'Billing address' field with the value: Harvard University, Accounts Payable, Email invoices to AP_Invoices@harvard.edu, P.O. Box 381588, Cambridge, MA 02238, United States. A pop-up dialog titled 'Location of Activity' is open, showing a text field with the value 'Great Britain (United Kingdom), Northern Ireland, England, Wales, Scotland' and a link 'Select from all values...'. The dialog has 'Save' and 'Cancel' buttons at the bottom.

Requisitions <

General ✓

Ship to & Bill to ✓

Accounting Codes ✓

Internal Notes and Attachm... ✓

External Notes and Attach... ✓

Special Handling & AP ✓

Ad Hoc Approver ✓

Supplier Information ✓

Final Review ✓

Requisition Approvals

Comments

Attachment Overview

PO Preview

Ship To edit

Shipping address

ATTN Name/Department Karen Kittredge
Building/Room 3rd Floor - Room 336
1033 Massachusetts Ave
Cambridge, MA 02138-0000
United States

Bill To edit

Billing address

Harvard University
Accounts Payable
Email invoices to AP_Invoices@harvard.edu
P.O. Box 381588
Cambridge, MA 02238
United States

Location of Activity ? X

Location of Activity

Great Britain (United Kingdom), Northern Ireland, England, Wales, Scotland
[Select from all values...](#)

Save Cancel

22

140 SUPPLY CENTERING

2023OCT161C Training

Relations

& Employee

RECORD RETENTION

Follow University's General Records Schedule

- Contracts, RFPs, ICQs and related materials should be retained for six years after final payment
- Invoices must be retained 4 years after the end of the fiscal year for nonsponsored or, for sponsored, 7 years after the final project account closing unless a longer period is specified by the sponsor

Note: The Buy-to-Pay system will retain all materials uploaded into the system indefinitely. Materials retained include the electronic record, invoice, vendor justification form, independent contractor questionnaire, and any other materials uploaded to a record. B2P has a 5MB file size limit, with 10 files/attachments per requisition.



CONTACTS

- **Questions around the ICQ and Classification Process:**
 - Local Human Resources Office
 - Office of Labor & Employee Relations
- **Legal Guidance**
 - Contract templates, guidance and a contract checklist may be found on the Strategic Procurement or Office of General Counsel's website.
 - OGC can also offer additional legal guidance if needed.
- **Global Support Services**
 - Guidance if work to be performed outside of US
- **Policy Guidance**
 - Financial Policy Office (financialpolicy@harvard.edu)
 - Office of Labor & Employee Relations



General Information

- Resources
 - Instructor-Led trainings for HR, department administrators and financial approvers, and hiring managers offered several times a year available in the Training Portal
 - On-Line Training available in the Training Portal
 - ICQ is a fillable PDF
 - Chart showing options to process payments for those that do not meet the IC test and are classified as employees (currently updating with new job type)
 - IC classification flowchart, PI Guide, and other additional materials and reference tools.
 - Materials can be found at the [Financial Policy](#) website or [Human Resources Policies](#) website
- Down the road
 - Explore opportunities to take advantage the Buy-to-Pay system to educate suppliers and hiring departments and possibly establish “gates” to payment process
 - Develop an audit plan





Pop Quiz



Q: Do I need to do an ICQ if the individual is already set up as a supplier?

A: Yes, an ICQ is based on the specific work instance and must be completed every time an independent contractor applies for work or there are changes in their scope of work.

Q: If an individual is already classified as an independent contractor, do they have to go through the independent contractor approval process each time they apply for a new contract?

A: Yes, the taxing authorities look at each beginning and ending work period as a separate contract performed by an individual. They require full documentation for each separate contract. Caution: The taxing authorities will regard an ongoing working relationship with an individual as an employee and not an IC even if the work is intermittent.

Q: I want to hire an individual for a one-time job and payment is less than \$3,000, do I need to go through the same independent contractor review process as I would for an amount above \$3,000?

A: Not necessarily, If the individual meets the three-part test for an IC, the ICQ is not required if it is a one-time engagement, the payment will not exceed \$3,000 and the contract period is less than 3 months (90 days). However, an exception attestation form must be submitted with the payment in order to show the school has done their due diligence in following the IC Policy.



Pop Quiz



Q: A department is unable to find sufficient Teaching Assistants (TA) for a three-week summer course. When this occurs, the visiting instructor will offer a TA slot to a researcher or PhD candidate at their home institution (often outside of the U.S.). Is this an employee or IC? Does this qualify as an exception due to the short duration (3-weeks) of the work and the individual will earn less than \$3,000?

A: While placing these individuals on a payroll is difficult due to the short duration of their appointment, this is a payroll transaction. The individual is performing a service that is a regular part of the school or unit's business.

Q: I have several independent contractors who work intermittently throughout the year. Can I create a contract that is based on the entire year for each of them in order to capture all work performed during that year?

A: No, contracts must be limited to each contract period and scope of work to be completed. Any later or additional work must go through a separate independent contractor process. If an individual is working on a regular basis, their classification may be that of employee.

Q: Do I need to follow the IC Policy if I am paying an honorarium?

A: Yes, regardless of what the payment is called, the IC Policy must be followed.

Additional Resources

[Business Expense Reimbursements Policy](#)

[Contingent Workforce Project](#)

[Honoraria and Reimbursements for Foreign Nationals](#)

[Human Subject Payments](#)

[Independent Contractor Policy – University Materials](#)

[Payment Categories and Hiring Methods if Classified as an Employee](#)

[IC PI/Research Guide](#)

[Independent Contractor Web-Based Training \(Training Portal\)](#)

[OGC Model Documents](#)

[Interim Payroll Policy - Out of State Payrolls \(see also Contingent Workforce Project\)](#)

[Performer Tax Information](#)

[Policy Subrecipient vs Contractor Guidance](#)

[Procure to Pay Manual](#)

[Procurement Policy](#)

[Record Retention Schedule](#)

[Responsibilities of Purchases, Preparers, and Approvers \(ROPPA\)](#)

[Strategic Procurement Contract Information](#)

[Travel Policy](#)



Appendices

[Exception Attestation Form](#)

[IC Process Workflow](#)

[IC Process for Guest Speakers or Lecturers](#)

[IC Classification PI / Researcher Guide](#)

[Do I need to Complete an ICQ/Guidance on Classifications](#)

[Sample – Payment Categories and Hiring Methods if Classified as an Employee](#)

[Summary of Object Codes for Performers](#)





Independent Contractor Questionnaire Exception Attestation Form

If one of the below requirements for exemption are met, completion of an Independent Contractor Questionnaire (ICQ) is not required. A written contract is still required and must be completed.

In addition, this form or other documentation attesting to the below must be completed and attached to the payment request upon submission to your approver.

Exempt from the ICQ Requirement:

- ☐ One-time, short-term engagement that meets all of the following criteria:
- A. Meets all three ICQ criteria below (see [IC Policy](#); if not certain, complete the [ICQ Questionnaire](#)).
 - 1. The worker must be free from Harvard's control and direction in connection with the performance of the service, both under a contract for the performance of the service and in fact.
 - AND
 - 2. The service performed by the worker must be outside the usual course of Harvard's business.
 - AND
 - 3. The worker must be customarily engaged in an independently established trade, occupation, profession, or business of the same type as the service being performed for Harvard.
 - AND
 - C. Total payments to the IC will not exceed \$3,000 in a calendar year, AND
 - D. Period of work is less than 90 calendar days.
- ☐ Guest Speaker or Guest Lecturer
- An ICQ is not required when hosting a guest speaker or guest lecturer receiving an honorarium or speaking fee for a one-time speaking engagement. (An honorarium is a payment provided as a token of appreciation for participation in an activity or event, rather than payment as a contractual obligation for services rendered.)

Name of Worker/IC (Individual or Entity): _____

Brief Project Service/Description: _____

Project Start Date: _____ Project End Date: _____

Total Amount to be Paid: _____

Attestation:

I have read the exemptions above and certify that the engagement of services by the designated worker satisfy one of the above exemptions necessary to designate the service provider as an independent contractor/consultant.

Signature: _____ School or Dept: _____

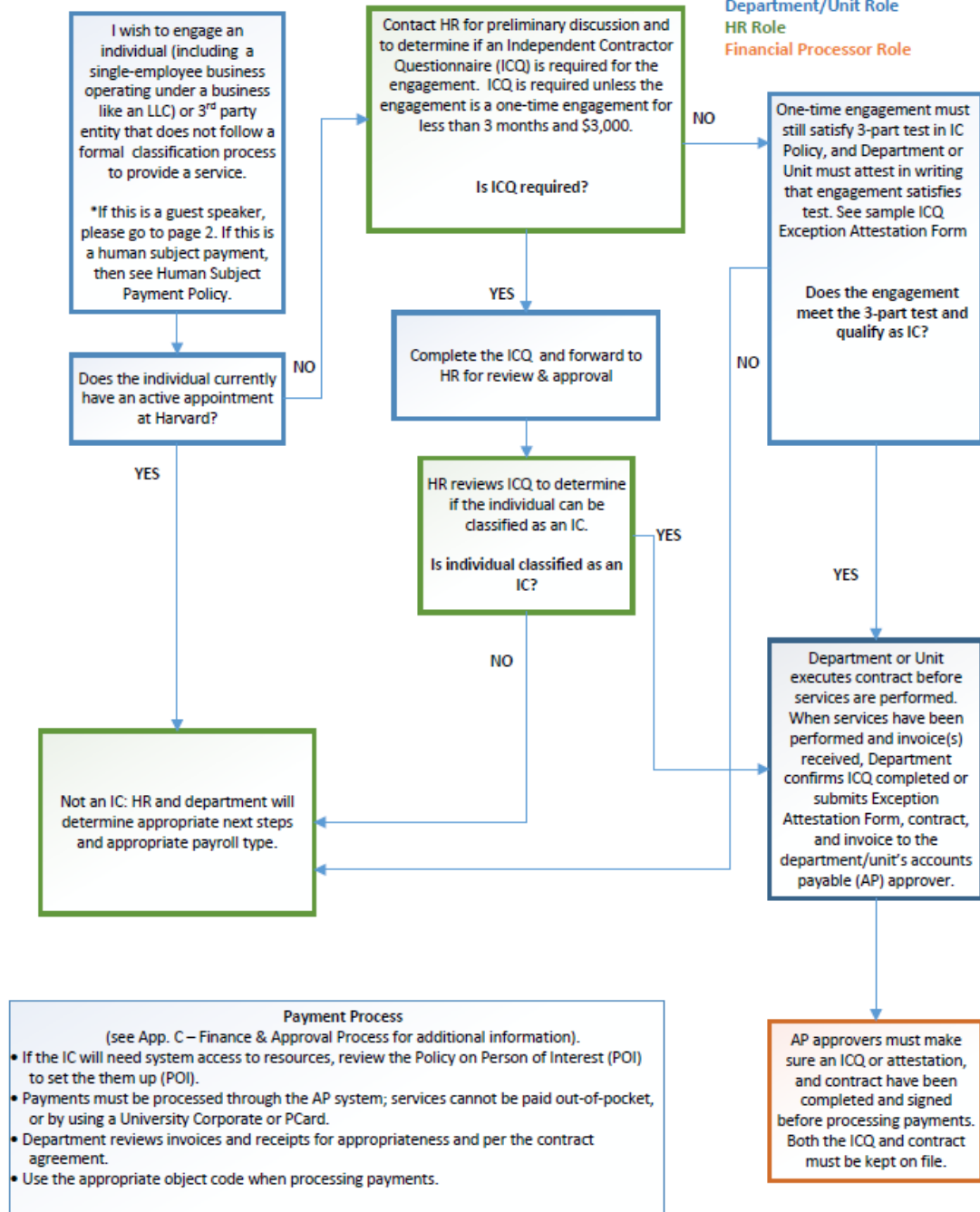
Print Name: _____ Date: _____



Independent Contract (IC) Process

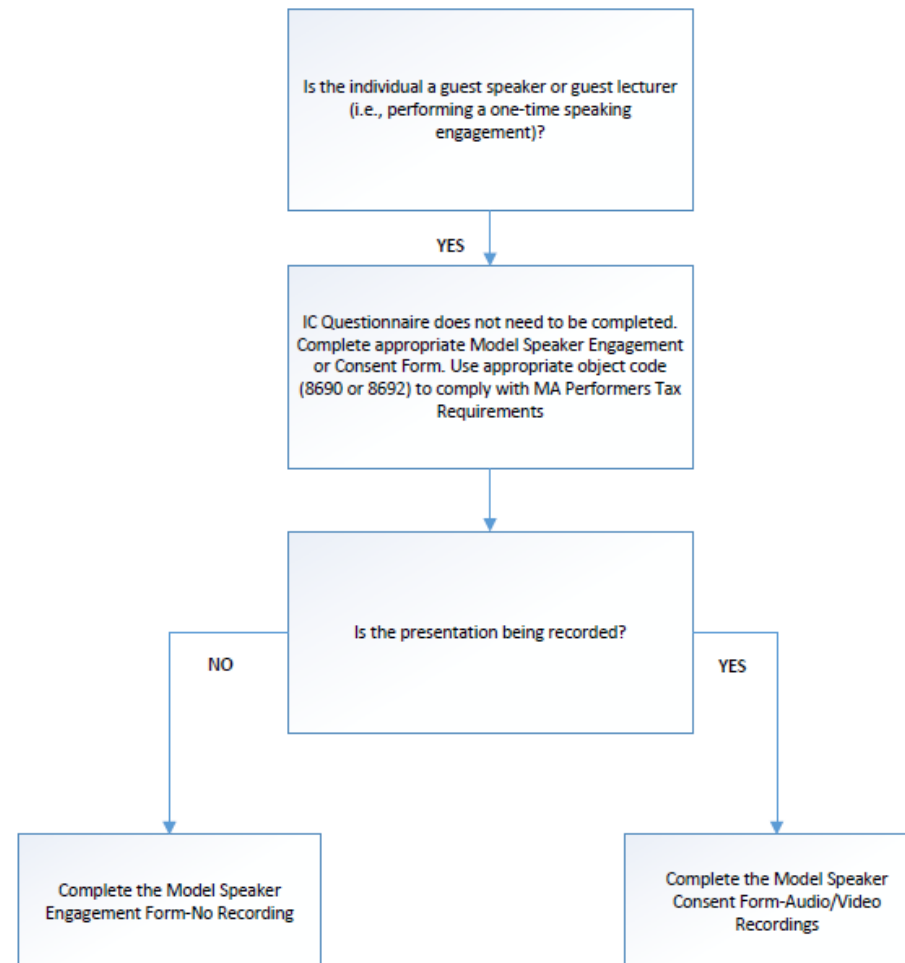
REV: 04/01/2019

Department/Unit Role
HR Role
Financial Processor Role



Independent Contractor (IC) Process for Guest Speakers or Lecturers*

Rev: 04/01/2019



*Guest speakers and lecturers do not require an ICQ when the payment is an honorarium provided as a token of appreciation (thank you) for participation in an activity or event where no fee is legally required and not as a contractual obligation to pay for services rendered. If the speaker determines or negotiates the payment amount, schools and units must follow the IC Policy or ICQ Exception Attestation Process. Be sure a foreign individual's visa status allows payments prior to offering an honoraria.

Examples would be a nominal payment and not required on an on-going basis and include:

- One-time lecture - Any individual teaching or co-teaching a substantial portion of a course, listed as an instructor in the course catalog or who holds a Harvard appointment cannot be classified as an IC.
- Guest speaker at an educational event, workshop, conference or other similar function.
- Panelist for a workshop or conference.
- Performing artist (though these are more commonly payment for services and must follow the IC Policy or ICQ Exception Attestation Process).



Independent Contractor Classification (IC) – PI/Researcher Guide

Per Massachusetts and federal law¹, the University is required to meet a number of obligations when classifying an individual providing services to Harvard. Under MA law, the presumption is that an individual is an employee unless the individual meets the three-part IC test, which is based on the completion of the [Independent Contractor Questionnaire \(ICQ\)](#) and review and classification by your local Human Resources Office. Individual schools and units may have more restrictive policies or internal processes or may be participating in a [Managed Service Program](#); contact your tub human resources or finance office for more information.

- Misclassifying a worker as an IC instead of an employee can result in a significant liability. The local department or unit is responsible for any liability resulting from a misclassification decision, including fines, penalties, and attorney's fees.
- A worker's or department's preference is not relevant to the classification; classification is based on state and federal criteria and regulations.
- The IC review and approval process must be completed PRIOR to a contract being signed or the work being performed. PIs/Researchers should work with their department administrator to complete the required IC review process.
- The Policy applies if you require services that will be completed by an individual OR a single-employee LLC, Company or Partnership OR a third-party marketplace not considered a managed service provider (i.e., marketplace does not go through a formal classification process, but acts as a freelancer marketplace such as freelancer.com).
- Some schools or units may offer an expedited review (exception process) for one-time guest speakers/performers or one-time payments for short-term, low dollar agreements. Contact your HR Office for guidance and refer to the [IC Policy Process Flowchart](#).
- If the IC Policy does not apply, a written contract is still required. Follow local school processes and policies regarding contracts.

Work Within the United States	Work Outside of the U.S.
<i>For work inside MA, Harvard must follow MA and federal rules and regulations for IC classification. For consistency, Harvard follows the MA and federal rules and regulations for IC classification for work outside of MA.</i>	<i>Harvard must follow the rules and regulations based on the country in which the work is taking place.</i>
<p>1. Unless individual qualifies as an exception allowed by your local school or unit, complete an ICQ. Information required includes:</p> <ul style="list-style-type: none"> a. Name of Worker/Service Provider b. Confirm a foreign individual is legally authorized to work in the U.S. See Most Commonly Seen Visa Types c. Scope of Work/Overview of Work d. Start/End Date of Work e. Estimated total cost f. Are services related or similar to services an employee is doing? <p>2. If an individual is classified as an IC, follow local school or unit requirements around contracts and the contract review process. See The Office of the General Counsel for model contract templates and required language.</p> <p>3. If an individual is classified as an employee, see the Payment Categories and Hiring Methods for Individuals Classified as an Employee.</p>	<p>1. These provisions may be different from MA law and are occasionally more stringent (Europe) or entail tax withholdings on payments to contractors. The local school's or unit's HR office should work with Global Support Services (GSS) to determine international IC status.</p> <p>2. The information required in the completed ICQ can help determine next steps.</p> <p>3. If an individual is classified as an IC, follow local school or unit requirements around contracts and the contract review process. See The Office of the General Counsel or contact Global Support Services for model contract templates and required language.</p> <p>4. If an individual is classified as an employee, see the Payment Categories and Hiring Methods for Individuals Classified as an Employee.</p>

¹ Mass. Gen. Laws Ch. 149, sec. 148B



Do I need to do an Independent Contractor Questionnaire?

An independent contractor questionnaire (ICQ) must be completed prior to engaging the individual to start work and regardless of where the work is being completed (both inside and outside Massachusetts). For work outside of the U.S., *Harvard must also follow the rules and regulations based on the country in which the work is taking place*. These provisions may be different than MA law and are occasionally more stringent (Europe) or entail tax withholdings on payments to contractors. See the [Independent Contractor Policy](#).

Who is completing the service?	Do I need to complete an Independent Contractor Questionnaire?
An individual	YES - An Independent Contractor Questionnaire is required or must meet the school's process regarding exceptions.
A single-employee Limited Liability Company (LLC), Unincorporated or Incorporated Company	YES - An Independent Contractor Questionnaire is required or must meet the school's process regarding exceptions.
A multiple-employee (more than one employee or partner) Limited Liability Company (LLC), Unincorporated or Incorporated Company	NO - An Independent Contractor Questionnaire is NOT required, but other policies may apply.
An entity - LLC, Unincorporated or Incorporated company or business that has more than one employee	NO - An Independent Contractor Questionnaire is NOT required, but other policies may apply.
Third-Party Entity that Act as Freelancer Marketplace and does not go through a formal classification process	YES - An Independent Contractor Questionnaire is required or must meet the school's process regarding exceptions.
A human subject payment	NO - An Independent Contractor Questionnaire is NOT required, but other policies may apply.
Third-Party Entity that classifies their personnel as employees (e.g., managed services provider, temp agency, payrolling service, IT staffing firm)	NO - An Independent Contractor Questionnaire is NOT required, but other policies may apply.



Guidance on Classifications

MYTH: Individuals can be paid as employees, independent contractors or vendors/suppliers.

FACT: There are only two options for paying individuals – as employees **or** as independent contractors. An “independent contractor” is the **same thing** as a “vendor” or “supplier.”

Employee

Paid via PeopleSoft or an approved out-of-state or out-of-country payroll

- Individual
- Generally being paid compensation or salary and wages in exchange for past, present or future services that are primarily for Harvard’s benefit.
- Requires a Form I-9
- Receives a W-2
- May have income taxes withheld

Vendor

(May also be called a Supplier or Contractor and may be paid for the purchase of goods and/or services.)

Paid via Accounts Payable (B2P)

- Can be operating as a single individual, or a multiple employee business
- Can be unincorporated, an individual person, a company, LLC, business, partnership, nonprofit, government agency, trust/estate, etc.
- Individuals or single-person companies (regardless of company type) must comply with the [Independent Contractor Policy](#)
- Foreign vendors (individual or entity) may have taxes withheld depending upon the payment type and tax status
- May receive a 1042S or 1099 based on vendor and payment type and tax status



Payment Categories and Hiring Methods for Individuals Classified as an Employee

If, upon Human Resource's review of a completed [Independent Contractor Questionnaire \(ICQ\)](#), an individual is classified an employee, there are several hiring methods and payment categories available. School and Units may have specific processes regarding administrative or academic appointments. Depending upon the hiring method chosen, different departments may be responsible for processing the type of payroll. See [Employment Outside of Massachusetts \(Domestic and International\)](#) or contact your local [Human Resources Office](#) (HR), Academic or Faculty Affairs Office, or Finance Office (FO) for additional guidance. Harvard students providing services to Harvard should be placed on a Harvard payroll and not paid as an independent contractor.

Category	Category Details	Benefits Eligibility	Fringe/Agency Fees
HARVARD REGISTERED PAYROLL STATES EMPLOYMENT OPTIONS – If approved to work off-campus, non-U.S. citizen employees must confirm that there are no restrictions on work location based on immigration status.			
<i>FACULTY OR RESEARCHER APPOINTMENT TYPES - SCHOOLS MAY HAVE SPECIFIC APPOINTMENT PROCESSES REGARDING ACADEMIC OR RESEARCH APPOINTMENTS; CONTACT YOUR ACADEMIC OR FACULTY AFFAIRS OFFICE FOR ADDITIONAL GUIDANCE.</i>			
Temporary Course Instructor Harvard Monthly Payroll Salaried Appointment Job Code: 700041 Object Code: 6120	<ul style="list-style-type: none"> Individuals teaching or co-teaching a substantial portion of a course, listed as instructors in the course catalog, or those who hold a Harvard appointment for their teaching role. May hold an annual term appointment (up to 12 months) and renewable. Contact your Academic or Faculty Affairs Office for guidance. 	<ul style="list-style-type: none"> No benefits (eligible to participate in TDA) Sick Time¹ 	Object Code: 6300
Temporary Executive Education Course Instructor Harvard Monthly Payroll Salaried Appointment Job Code: 700042 Object Code: 6120	<ul style="list-style-type: none"> Individuals teaching or co-teaching a substantial portion of an executive education course on a temporary or intermittent basis in an executive education program. May hold an annual term appointment (up to 12 months) and renewable. 	<ul style="list-style-type: none"> No benefits (eligible to participate in TDA) Sick Time¹ 	Object Code: 6300
Temporary Academic Service Harvard Monthly Payroll Salaried Appointment Job Code: 700043 Object Code: 6120	<ul style="list-style-type: none"> Individual whose primary academic appointment is non-paid (e.g., adjunct or emeritus) who is appointed to render non-instructional academic service and be paid on a temporary or intermittent basis. Contact your Academic or Faculty Affairs Office for guidance. 	<ul style="list-style-type: none"> No benefits (eligible to participate in TDA) Sick Time¹ 	Object Code: 6300
Temporary Academic Researcher Harvard Monthly Payroll Salaried Appointment Job Code: 000048 – Vstg Undergrad Res Fel Job Code: 000050 – Vstg Postgrad Res Fel Object Code: 6120	<ul style="list-style-type: none"> Used for short-term (≤1 year) appointments. Visiting Undergraduate Research Fellows – Enrolled in college (not Harvard). Visiting Postgraduate Research Fellows – College graduate with a bachelor's who may have either enrolled in a master's program (not Harvard) or hold a master's degree from Harvard or another institution. Working on behalf of/for Harvard rather than for their own professional development or on their own research. See Non-Benefits or PeopleSoft Job Codes for other options. Contact your Academic or Faculty Affairs Office for guidance. 	<ul style="list-style-type: none"> No benefits (eligible to participate in TDA) Sick Time¹ 	Object Code: 6300

Summary of Object Codes



Lecture / Performance Held Outside of Massachusetts Use Object Code 8691

(Lect Perf OUTSIDE MA - honoraria/svc
pmt/fees to vistng lect/perf)

- Individual or entity was not located in Massachusetts when they performed the service
- Not subject to the Massachusetts Performer tax (though they may be liable for other taxes based on their location and immigration status)
- Payments may be classified as honorarium or service payments



Lecture / Performance Held Inside Massachusetts Use Object Code 8690

(Lect Perf IN MA WH Ex-honoraria/svc
pmt/fees to vis lec/perf/ent(pmt holds))

No Exemption Attestation

- Individual or entity was in Massachusetts when they performed the service
- Payments may be classified as honorarium or service payments
- Individual or entity did NOT submit a Form PWH-WW or PWH-RW to Mass Department of Revenue
- Will be assessed a performer tax when they earn >\$5,000 cumulatively in a calendar year. Note: The tax will be withheld on the total payment that reaches the \$5,000 threshold and any payments after that



Lecture / Performance Held Inside Massachusetts

Use Object Code 8692

(Lect Perf IN MA WH Ex-honoraria/svc
pmt/fees to vis lec/perf/ent(pmt holds))

Includes Exemption Attestation

- Individual or entity was in Massachusetts when they performed the service
- Payments may be classified as honorarium or service payments
- Individual or entity has completed the Attestation Form for Claiming Exemption or Reduction in Withholding acknowledging they submitted a Form PWH-WW or PWH-RW to Mass Department of Revenue at least 10 days before the event
- Central Accounts Payable will review the documentation and adjust tax liability as appropriate.



Individual - Non- Performance Related Honoraria Use Object Code 8694

(Honoraria-Individual "non
performance" related)

- Non-performance payment that is classified as an honorarium.
- Payment is to an individual (not entity) and is one-time payment for which no fee is required or set. For example, a juror on an award selection committee.
- Non-performance related payments to an entity would most likely be in the 79XX object code series.