

# HARVARD

UNIVERSITY POLICY



## Guidance: Classifying Employee Fellows vs Nonemployee Fellows

Originally Issued: 12/05/2022 Working Draft – Comment period through 5/31/23.

Submit feedback to [financialpolicy@harvard.edu](mailto:financialpolicy@harvard.edu). Anticipated formal roll out 7/1/2023

Last Revised: N/A

Responsible Office: Financial Policy Office

---

### Purpose of Guidance

At Harvard, research scholars who are neither students nor faculty members are known by a variety of titles (fellow, postdoc, scholar, trainee, grantee, stipendee, awardee, etc.). Regardless of title, it is important that these individuals be correctly classified either as Harvard employees (receiving payments of employee compensation from Harvard) or nonemployees (receiving nonemployee fellowship payments from Harvard). A misclassification may result in adverse tax or other consequences to Harvard or the individual (who for the sake of consistency are referred to as “fellows” below).

The Harvard department is required to classify the fellow based on the objective, specific facts and circumstances of the fellow’s position and responsibilities. The classification does **not** depend on such subjective or arbitrary factors as the department’s or fellow’s classification preference, the fellow’s job title, or the label attached to the payment (stipend, grant, award, etc.).

Individuals paid on federal research awards are generally considered compensation for services (employee fellow). Nonemployee fellows are only allowed on specific grant types (e.g., training grants T31 or NSF Doctoral Dissertation Grants) or participant support costs. In rare cases, a sponsor agreement may require a particular classification (for example, fellows supported by NIH National Research Service Awards (NRSA)) are required to be classified as nonemployee fellows per IRS 201705001 (117.05-00, 117.05-06). What a sponsor may call the appointment in the RFP or budget does not necessarily match what the individual should be classified as to meet labor and IRS requirements. See the [Checklist for Classifying Employee Fellow vs. Nonemployee Fellow](#) and additional materials to aid in classification.

This document provides guidance to departments in determining the appropriate classification under the facts-and-circumstances test. If there is uncertainty on the classification of an individual being paid on a sponsored award, contact your research administration office. For non-sponsored funding, contact [financialpolicy@harvard.edu](mailto:financialpolicy@harvard.edu). Classifying an individual as an employee is the most conservative path.

Based on classification, visa type, and work location, additional restrictions may apply. See the [Payroll Policy website](#).

---

## Classification and Processes

### I. Basic Distinction

#### A. Employee Fellowship

**Employee fellowship** payments are made in exchange for **services that are primarily for Harvard's benefit\***. Employee fellowship payments represent compensation (i.e., salary or wages) and generally include payments that:

1. Relate to activities that are subject to Harvard's control or supervision, meaning a Harvard representative tells the individual where, when, and how to do the work, OR
2. Subsidize studies or research primarily for the benefit of Harvard, OR
3. Relates to research where the research topic is determined by Harvard or the sponsor, OR
4. Represent payments for teaching.

This classification includes payments for research services performed under most federal agency research grants.

\*Relevant Factors for determining if Work would be primarily for Harvard or a sponsor's benefit for work/services that is more than de minimis or insignificant and would include one or more of the following:

1. services are for a grant that has a deliverable to the sponsor;
2. individual is performing a function that directly enhances the program or activities of Harvard or the sponsor;
3. individual is participating in an activity that generates income to Harvard or the sponsor;
4. primary purpose of the work is for Harvard to obtain useful results from the individual's research;
5. Harvard or the PI determines the research activities

#### B. Nonemployee Fellowship

By contrast, the IRS defines **nonemployee fellowship** payments as payments made to support an individual in the pursuit of their **professional development, scholarship or research**. Nonemployee fellowship payments are **not** payments in exchange for services, but rather are payments to allow someone to carry out their own research or educational activities under supervision or mentorship of a faculty member. Nonemployee fellowship payments often fund living, travel, or research expenses.

Generally, nonemployee fellowship payments meet ALL of the following conditions:

1. The primary purpose is to aid the fellow's pursuit of study or research.
2. The payment is an award with few strings attached, i.e., no requirement on the fellow's part to perform substantial services or a specific set of tasks for the sponsor or the University<sup>1</sup>.
3. The research topic is determined by the fellow, not assigned by the sponsor or Harvard (although faculty may advise recipients).
4. While the University or sponsor may receive some benefit from a recipient's work product (for example, certain intellectual property rights), Harvard or the sponsor is not the primary beneficiary of the work, and the work does not primarily support a faculty member's project

---

<sup>1</sup> A requirement that the fellow provide evidence of effort – such as through limited oral or written progress reports - is NOT considered substantial services or a specific set of tasks.

or research program.

NOTE: Contact your [GSS Consultant](#) for individuals classified as fellows who will primarily located outside of the United States.

**II. Relevant Factors**

While reciting the legal standard is fairly simple, applying the standard as a practical matter may be more challenging. Many positions will not squarely fit one classification or the other. In that case, the department should consider the nature of the position and the fellow’s responsibilities, and determine which classification, is the closer fit.

In making this determination, department should be aware of certain factors that, where present, tend to suggest one classification or the other (although a given factor is not, by itself, necessarily determinant).

Factors suggesting an employee fellow payment	Factors suggesting a <u>non</u> employee fellow payment
<ul style="list-style-type: none"> <li>• Pay is based on percentage of effort.</li> <li>• Payment is tied to completion of one or more deliverables.</li> <li>• Harvard can immediately stop payments if the fellow interrupts the work.</li> <li>• The relationship between faculty member and fellow is more supervisor/worker than mentor/mentee.</li> <li>• The faculty member closely supervises the work.</li> <li>• The fellow is doing work previously done by an employee or is acting as a replacement or substitute for an employee fellow, such as a research assistant/associate.</li> <li>• The faculty member or sponsor identified the research topic.</li> </ul>	<ul style="list-style-type: none"> <li>• Payment is typically based on a flat amount.</li> <li>• Payment is for housing or other living expenses such as food, accommodation or health insurance.</li> <li>• Harvard cannot immediately stop payments if the fellow interrupts the work.</li> <li>• The relationship between faculty member and fellow is more mentor/mentee than supervisor/worker.</li> <li>• The faculty member has nominal supervision over the work.</li> <li>• The fellow identified the research topic (perhaps with advice from the faculty member).</li> <li>• The fellow applied for and obtained the funds from an outside sponsor (even if the sponsor required the funds to flow through Harvard).</li> </ul>

**III. Other Information**

A. Supplemental Stipends or Secondary Employee Appointments

If a recipient has two discrete roles and duties and is receiving separate funding for each, it may be appropriate they be treated as two different appointments and classifications (e.g., one appointment as an employee fellow and another as nonemployee fellow).

Some sponsors may have restrictions around multiple stipends or appointments. Confirm with the fund terms and conditions before giving a secondary stipend or employee appointment. In order to determine whether stipend supplementation or a second salaried appointment is the best approach for support, sponsor requirements dictated by the stipend source as well as the secondary source of support (stipend supplementation or second salaried appointment) must be considered.

1. Supplemental Stipends

To supplement a stipend means to provide additional support in *the form of additional stipend* to an individual from a funding source (sponsored or institutional funds) other than the original source of the stipend (e.g., the fellowship or training grant). Such stipend supplementation often occurs when there is a gap between the stipend amount received from an external fellowship and the amount specified in Harvard's appointment letter.

When a nonemployee fellowship recipient is allowed, based on the terms and condition of the award, to receive additional financial support, generally, the supplement should also be in the form of nonemployee fellow stipend payments rather than employee fellow salary.

Stipend supplementation should not be confused with using formal salary compensation.

Stipend supplements should not be charged to sponsored awards.

2. Secondary Appointments

Nonemployee fellows may receive additional pay in the form of employee salary in narrow circumstances. For example, when a nonemployee fellow works directly on a PI's research grant, they may receive salary compensation for effort on the project. The research activity for which the salary is paid must be separate and distinct from the research activity from which the stipend is paid and must be allowable under both the terms and conditions of the nonemployee fellow's existing fellowship arrangement and the research grant.

Employee fellows may hold multiple appointments as long as the combined appointments do not exceed a one FTE. Students have more restrictive FTE limits.

B. Corrections Due to Misclassification

A misclassification may result in adverse tax or other consequences to Harvard or the individual. Misclassifications must be corrected within a certain period of time and follow certain steps in order to comply with state and federal reporting and withholding requirements. Schools and Units should coordinate this process with their Finance Office or Payroll Office. Contact OSP for guidance around correcting misclassifications.

C. Tuition Remission on Sponsored Awards

Graduate tuition remission is considered compensation and associated with graduate student employees paid a salary. See the Sponsored [Tuition Policy](#) for specific restrictions.

D. Work Location and Visa Status

1. After classifying as employee or nonemployee, departments and units must confirm that an individual's visa status allows them to be paid using that classification. For example, recently graduated students with an Occupational Practical Training (OPT) extension, cannot be paid as a nonemployee fellow stipendee.
2. Nonresident aliens may also have additional restrictions on their work location and should consult with Harvard International Office (HIO) to confirm eligibility to work remotely or in another Harvard registered state. See [Remote Employment Guidance and Payroll Policy](#).

#### IV. Processing Payments

Based on classification, visa type, and work location, additional restrictions may apply. See the [Payroll Policy website](#).

##### A. Employee

Compensation/salary and wage payments are made through PeopleSoft for those working in Harvard Registered Payroll states. These payments are reported on a Form W-2 or Form 1042-S (if a foreign national and a tax treaty applies). Individuals seeking to work in a non-registered payroll state or outside of the United States must comply with the [Payroll Policy](#).

##### B. Nonemployee

Fellowship/stipend payments may be processed via PeopleSoft or by Accounts Payable. Check with your local academic or student affairs office for school-specific policies and processes.

1. PeopleSoft Payments: generally recurring payments paid directly to the individual and processed via the Monthly Stipend Process (MST) using object code 6440 or Monthly External Payroll (MEP) using object codes 6450 or 6452. These payments are overseen and administered by the school's financial aid office and considered U.S. sourced income.
2. Accounts Payable Payment: Generally processed as one-time stipends/ fellowships/ awards/ grants. Be sure to use appropriate object code and note the period and location of the activity. Special rules apply for foreign individuals, see NRA Tax Compliance [Location of Activity](#).

---

### Contact/Responsible Office

**Hiring/Appointing Departments:** Works with local HR or Academic/Faculty Affairs to determine appropriate classification and appointment set-ups. Also responsible for making sure individual is charged to the correct account string and corrects any errors in a timely manner (e.g., at a minimum quarterly).

**Sponsored Programs Office:** Responsible for advising units on rules and requirements of federal and nonfederal awards, grants, and contracts.

**Local Human Resources/Academic Affairs Office:** Responsible for appointments are classified and processed appropriately and in a timely manner.

**Central Payroll:** Processes appointments as submitted and involved in adjustments needed.

---

### Revision History

---

### Related Resources/Appendices

[Appendix A: Taxability of Payments](#)

[Appendix B: Definitions](#)

[Effort Reporting Policy](#)

FAS Research Administration Services [Supplemental Stipends](#)

[Fellowship Payment and Reimbursements for Students and Nonemployee Postdocs/Fellows](#) and [Fellowship Toolkit](#)

[Harvard Graduate Student Union Agreement](#)

[Independent Contractor Policy](#)

[Job Aid - Checklist for Classifying Employee Fellow vs. Nonemployee Fellow \(Nonstudent or Student\)](#)

[Job Aid - Employee Fellow vs Nonemployee Fellow Flowchart – Student and Nonstudent](#)

[Job Aid - Stages of an Award: Salary vs. Stipend](#)

[Participant Support Costs Guidance](#)

[Research Administration Glossary](#)

[Sponsored Expenditure Guidelines](#)

[Sponsored Tuition Policy](#)

[Stipends on Sponsored Awards](#)

#### [JOB AIDS CURRENTLY UNDER DEVELOPMENT](#)

Job Aid – Case Study Examples including Visa and Sponsored Classifications

Job Aid – Correcting Inappropriate Classification of Employees and Fellows (Internal Document)

Job Aid – Summary Key Differences Nonstudent Employee Fellows vs Nonemployee Fellow (Includes Job Codes)

Job Aid – Summary Key Differences Student Employee vs Nonemployee Fellow (Includes Object Codes)

Job Aid - Sponsored Award Life Cycle

Working Draft

## Appendix A: Taxability of Payments

The taxability of payments depends on the payment type (employee fellow compensation vs nonemployee fellowship stipend) and the U.S. tax status of the recipient. See [Fellowship Payments and Reimbursements for Students and Nonemployee Postdocs/Fellows](#).

### U.S. tax residents

- Employee fellow compensation/salary and wages is fully taxable for income tax purposes, and is also generally subject to tax withholding. The University is required to withhold and remit taxes on the employees' behalf.
- Nonemployee fellowship payments are generally included in gross income (taxable) to U.S. tax residents for income tax purposes; however, they are not subject to tax withholding. This means the University does not report or withhold tax from fellowship payments made to U.S. tax residents. U.S. tax residents receiving fellowship payments are responsible for making quarterly estimated federal and state income tax payments, if needed.

### Nonresident aliens / foreign nationals

Employee fellow compensation/salary and wages as well as nonemployee fellowship payments within the United States are generally taxable income to nonresident alien recipients and the payments are subject to withholding. See [Nonresident Alien Tax Compliance](#). Proper classification of payments to nonresident aliens is critical, as the rate of withholding and potential eligibility for treaty benefits varies on the type of payment. The location of the activity (whether inside the U.S. or outside the U.S.) also affects taxability and withholding. Individuals working outside the United States may have additional restrictions and may be also be subject to tax and withholding requirements of that country.

	<b>U.S. Employee Compensation/Salary &amp; Wages</b>	<b>U.S. Nonemployee Fellowship/Stipend</b>
<b>U.S. Tax Residents</b>	<ul style="list-style-type: none"> <li>• Harvard is required to report payments to the IRS and to the recipient on Form W-2</li> <li>• Subject to federal and state income tax withholding and also Social Security and Medicare (FICA) tax withholding</li> </ul>	<ul style="list-style-type: none"> <li>• Harvard is not required to report payments to the IRS or to the recipient</li> <li>• No withholding is required</li> <li>• Recipient must <b>self-report</b> as gross income</li> </ul>
<b>Nonresident Aliens</b>	<ul style="list-style-type: none"> <li>• Harvard is required to report payments to the IRS and to the recipient on Form 1042-S if a tax treaty applies or Form W-2 if no tax treaty applies</li> <li>• Withholding is required (usually at 14% or 30%) but may be reduced by tax treaties if available</li> </ul>	<ul style="list-style-type: none"> <li>• Harvard is required to report payments to the IRS and to the recipient on Form 1042-S</li> <li>• Withholding is required (usually at 14% or 30%) but may be reduced by tax treaties if available</li> </ul>

## Appendix B: Common Terms and Definitions

### Definitions

**Affiliate Institutions:** For the purposes of this policy, clinical hospitals and research institutes that formally partner with Harvard University on patient care and clinical training are considered affiliate institutions.

**Compensation:** Payment for services, also known as a salary and wages. Payment may be based on an hourly rate or percentage of effort.

**Employee:** Individual performing services for compensation, wages or salary. An employee may or may not qualify for benefits.

**External Post Doc or Fellow:** A nonemployee working at Harvard to continue their personal research or professional development scholarship under the general supervision of a Harvard faculty member.

**Fellow:** The term fellow may be used interchangeably with other terms such as scholar, Post Doc, trainee, grantee, stipendee, awardee, teaching fellow, research fellow, etc. For nonstudents, the title of Fellow often denotes an academic appointment at Harvard. A fellow may be an employee or nonemployee position based on their work. Fellows often hold doctorates, but not always.

**Fellowship or Fellowship Grant:** Usually a short-term opportunity to support an individual in the pursuit of their professional development, personal learning or scholarship. Fellowship payments often represent payment for living, travel, or research expenses and are not considered wages and do not create an employee-employee relationship.

**Grantor:** See Sponsor.

**Harvard Student:** A student enrolled in a degree program at Harvard.

**Internal Postdoc or Fellow:** A Harvard employee doing work for and supported by funding under the direction of a Harvard Principal Investigator.

**Nonemployee:** An individual who does not have a formal employment relationship with Harvard.

**Non-Paid or Unpaid Appointment:** Individual who holds an appointment at Harvard, but is not paid by Harvard.

**Nonqualified Expenses (taxable):** Payment to aid in an individual's living expenses or pursuit of study or research. A fellowship may take the form of a travel award or allowance. These expenses are not related to performance of services on behalf of Harvard.

**Outside Entity/Other Entity:** An entity that is not Harvard University or affiliate.

**Optional Practical Training (OPT):** Is a temporary employment that is directly related to an F-1 student's major area of study. OPT must be paid as compensation and not a stipend. Length of employment eligibility and additional restrictions are individual-based.

**Paid Appointment:** Individual who holds a paid appointment at Harvard. The individual may or may not be considered an employee.

**Participant (in relation to Participant Support Costs):** A non-Harvard employee who is the recipient, not the provider, of a training associated with a workshop, conference, seminar, symposium, or other short-term instructional or information sharing activity. Participants are not required to provide any deliverable to the University and they are not subject to Harvard human resources policies (e.g., they cannot be terminated for failure to perform). Participants may include students, scholars, and scientists from other

institutions, representatives of private sector companies, teachers, and state or local government agency personnel.

**Postdoctoral:** Often an individual completing post-graduate work. Most often postdoctoral work, but not always.

**Primary Beneficiary:** Harvard or the sponsor is the primary beneficiary for work that is more than de minimis or insignificant and includes one or more of the following: 1) services are for a grant that has a deliverable to the sponsor; 2) individual is performing a function that directly enhances the program or activities of Harvard or the sponsor; 3) individual is participating in an activity that generates income to Harvard or the sponsor; 4) primary purpose of the work is for Harvard to obtain useful results from the individual's research; 5) Harvard or the sponsor have the right to use the research results or own the patents or copyrights; 6) Harvard determines the research activities and/or the individual's research services directly support a faculty member's project or research program

**Qualified Expenses (nontaxable):** Books, supplies, and equipment required for courses of instruction at such an educational organization. In order to receive nontaxable treatment, the recipient must be a degree candidate.

**Qualified Scholarship (nontaxable):** Scholarships used to pay for "qualified tuition and related expenses" received by an individual who is a candidate for a degree at an educational institution.

**Qualified Tuition and Fees (nontaxable):** Tuition and fees required for the enrollment or attendance of a student at an educational organization. These are nontaxable if the recipient is a degree candidate.

**Salary:** See Compensation.

**Scholarship:** an amount paid or allowed to, or for the benefit of, a student at an educational organization to aid them in pursuing of their studies. Amounts qualify as a scholarship or fellowship grant if the primary purpose of the studies or research is to further the education and training of the recipient in their individual capacity. For where the sponsor derives some incidental benefit from a grant, see "Research Activities (Fellowships) Versus Research Services (Employee Compensation)" above.

**Sponsor:** Sometimes call Grantor. The agency or entity from which project funding is received. The source of funding may be internal Harvard funds (gifts, endowment, etc.) or external funds (formal agreements with federal, state, local governments, non-profit or for-profit organizations, or other entities including foundations and universities).

**Stipend:** Stipends are payments made to individuals for subsistence support or to defray expenses during a period of academic appointment. Stipend payments are not compensation for services rendered and, therefore, are not allowable on federal awards unless the purpose of the agreement is to provide training to selected participants and the charge is approved by the sponsoring agency (OMB Circular Uniform Guidance, Subpart E).

**Stipendee:** Individual receiving a stipend – at Harvard this is typically a nonemployee fellow.

**Student:** An individual formally enrolled and recognized as a student at Harvard.

**Trainee:** Individual participating in a training program on a training grant. Trainees on training grants are paid stipends.