



Independent Contractor Policy Refresher

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Key New Elements

- Effective date of Revised Policy – July 1, 2019
- Revised 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
 - Presumption of employee status unless 3-part Massachusetts IC test is met
 - A worker or department's preference **is not relevant** to the classification determination
- 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 IC Questionnaire reflects Massachusetts law and is easier to complete and analyze
- Identifies lower risk engagements as exceptions to IC Questionnaire requirement (but must still comply with the law)

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 vendor 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/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.
- An ICQ is required for the following engaged to perform a service for Harvard
 - An individual engaged to perform a service for Harvard (but 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 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.

University Independent Contractor Questionnaire (ICQ) Exceptions Process

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

- The local department or unit must still confirm that the classification satisfies the three-part legal test
 - A written contract is still required
 - The local department or unit must provide the accounts payable approver with a written exception attestation form or statement of why an ICQ 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.

See next slide for SPH Exception Processes

SPH Independent Contractor Questionnaire (ICQ) Exception Processes

Guest Speaker or Guest Lecturer

- 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).
- 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.
- Make sure to complete the appropriate [model speaker engagement](#) forms as necessary.

Single, Short-Term Engagements for Less than \$3,000

- A full ICQ is not required; however departments must submit a completed [SPH Approval Form for Short Term Engagements Less than \\$3,000](#) as well as a scope of work their HR partner for review and approval prior to engaging the individual.
 - The engagement must satisfy 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.

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, Randstad)
 - 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/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

- 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/Vendor] shall be an independent contractor, free from Harvard's direction and control, and not an agent or employee of Harvard.** See [SPH Contract Requirements](#).
- 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](#). See [SPH Contract Requirements](#).
- 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.

SPH Contract Requirements

SPH has specific contract review and signature requirements based on the contract amounts.

Contracts less than \$50,000

1. HR Partner reviews and completes Independent Contractor Questionnaire and sends back to Department
2. If determined to be an IC, Department completes the [HU Short Form Model Consultant Agreement Less than \\$50K](#) and sends to HR Partner for approval.
3. HR returns the form back to the Department for execution by appropriate Department rep and IC.
4. Department retains copies of all documents for audit support

Contracts \$50,000 or more

1. HR Partner reviews and completes Independent Contractor Questionnaire and sends back to Department
2. If determined to be an IC, Department completes [the HU Long Form Model Consulting Agreement \\$50K or more](#) and sends to HR Partner for approval.
3. The HR Partner sends all documentation to OFS.
4. OFS returns back to the Department for contract execution by appropriate Department rep and IC.
5. Department retains copies of all documents for audit support.

Hiring Department or Unit and Department Approver Responsibilities

Local Hiring Department or Unit Responsibilities

- Determine if the IC Policy applies and initiate any required procedures, including contact with HR consultant and completion of ICQ
- Obtain proper review and approval before contract is signed and before any services are performed
- If not using a Harvard contract template, be sure that any IC contract contains the following language: **[Consultant/Contractor/Vendor] shall be an independent contractor, free from Harvard's direction and control, and not an agent or employee of Harvard.** See OGC or SP website for contract templates.
- Follow local school or unit's internal contract review and signature guidelines
- Collect required documentation to set individual up as a supplier vendor if required

After services have been completed the Department AP preparer and approver must:

- Confirm ICQ and contract have been completed and are on file
- Review and prepare invoice for payment

Use appropriate object code for the service completed

Include with invoice any additional required documentation (e.g., Exception Attestation Form or [attestation form billing code 8692](#)). Some schools or units may require ICQ and contracts be submitted with invoice, others may store them at the local level

- If the department approver does not receive or have evidence of the above required documentation, the payment cannot be processed

CONTACTS

- **Questions around the ICQ and Classification Process:**
 - See [SPH Independent Contractor Processes](#)
 - 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



Additional Resources

[Business Expense Reimbursements Policy](#)

[Conga-Novatus Contract Management Tool](#)

[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 Policy - SPH Specific Instructions and Exception Form](#)

[OGC Model Documents](#)

[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](#)

[SPH Exception Attestation Form](#)

[SPH IC Process Workflow](#)

[IC Process Workflow](#)

[Do I Need to Complete and ICQ/Guidance on Classifications](#)

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





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 (or agreement/confirmation if a guest speaker) is still required and must be completed. **Individual schools and units may have more restrictive policies or internal processes; contact your tub human resources or finance office for more information before using this form.**

In addition, this form or other documentation attesting to the below must be completed and attached to the payment request upon submission to your local school or unit's approver. *This form is not required by Central Accounts Payable (AP) but must be kept on file in order to comply with the IC Policy and review process. Departments may choose to upload this document into the AP system as part of the IC Policy Documentation Process.*

Exempt from the Independent Contractor Questionnaire (ICQ) Requirement:

☐ **One-time, short-term engagement must meet 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, 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): _____

Work/IC Email (for supplier set-up): _____

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: _____

04/24/2020





**SPH Independent Contractor Approval Form for Single, Short-Term
Engagements of Less than \$3,000**

*Please note: this form may be used in place of completing the Independent Contractor Questionnaire (ICQ) **only** when the IC engagement will last no longer than three months and the total payments to the IC will not exceed \$3,000.*

Contact Information

1. Date:
2. Department:
3. Departmental Contact (name, title, email and phone):
4. Name of Worker/Service Provider:
5. US Citizen or Permanent Resident? Y/N
If No, must review visa status and confirm if individual is eligible to work in the US.
6. Is the individual a current or former Harvard Employee?
7. Are employees doing substantially similar work? Y/N

Overview of Project

1. Proposed Period of Engagement:
2. Location of Work:
3. Estimated Total Cost:
4. Scope of Work:

Department Administrator or Designee Signature (required):

I acknowledge that the University may hold my department or unit financially responsible for any additional taxes, interest, and penalties that may be assessed due to misclassification.

Name: _____ Department: _____

Signature: _____

Title: _____ Date: _____

HR Partner:

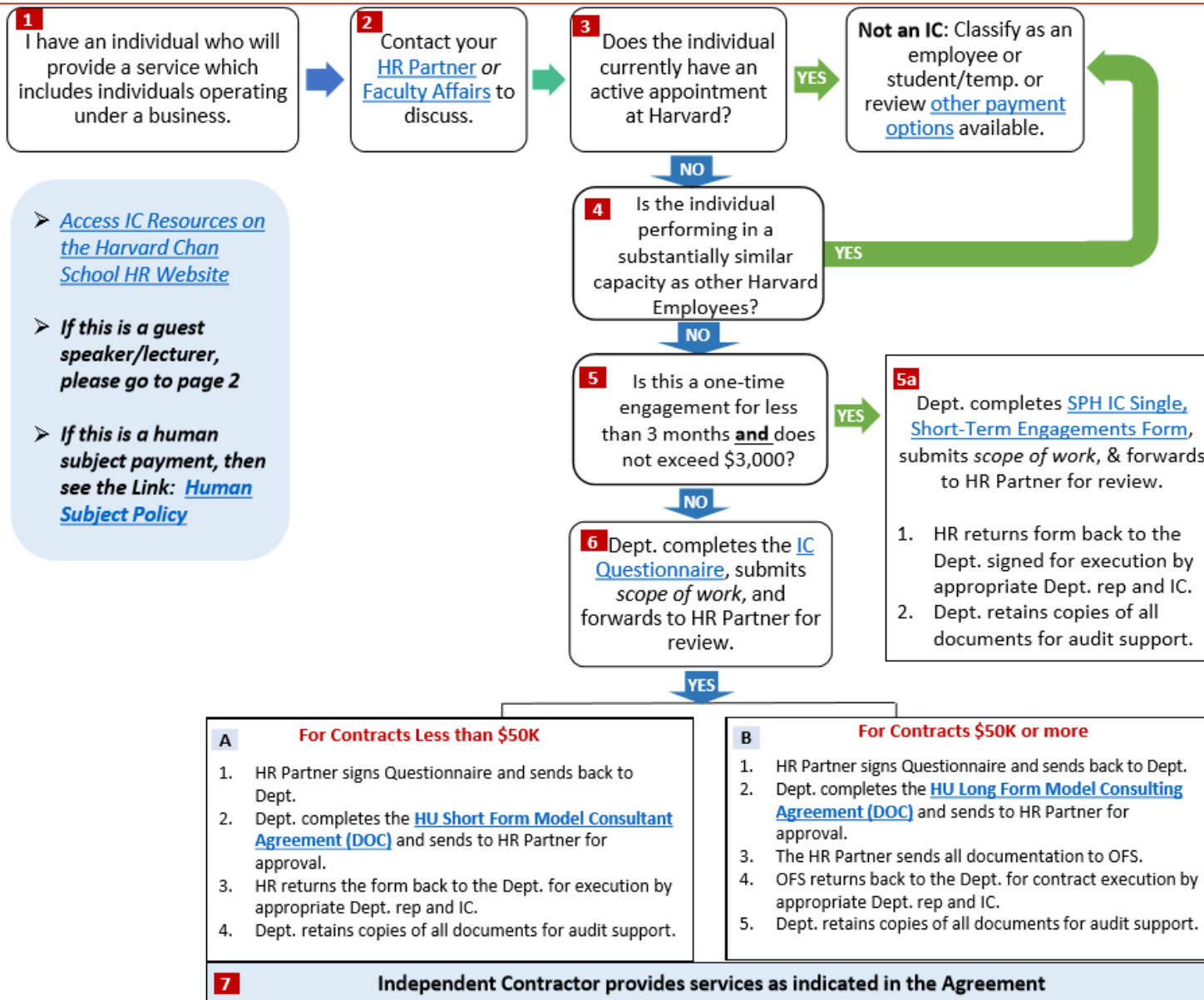
Name: _____ SPH HR

Signature: _____ Date: _____



Independent Contractor (IC) Process

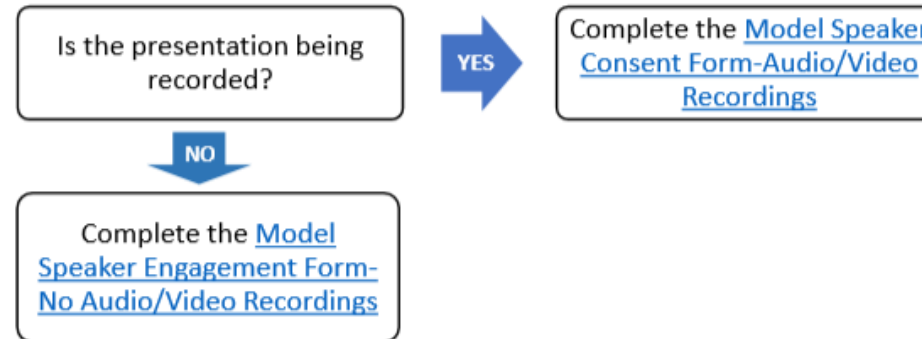
11/13/2019



- Payment Process by Harvard Chan School Departments**
- At the start of this process **ALL forms** must be approved and on file:
- Review the [Buy 2 Pay website](#) on job aids and resources to setup Independent Contractors as vendors in the system.
 - If the IC will need system access to resources, review the [policy on Person of Interest](#) (POI) to [set them up](#) in [MIDAS](#).
 - The Dept. reviews the IC invoice(s) and receipts for appropriateness. Copies of all receipts must be consistent with the IC Agreement retained by the Dept.
 - The Dept. processes payment through HCOM, the only acceptable method of paying ICs. Harvard employees must not pay for such services out of pocket, or by using a Corporate Card or PCard.
 - Code the payment(s) to the appropriate object code in HCOM, generally a professional services object code.
 - The Dept. must attach the HCOM documentation for these payments including a copy of the ICQ or the ICQ Exception Form.

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Follow this process flow for guest speaker/lecturers receiving an honorarium for a **one-time* speaking engagement**. An *Independent Contractor Questionnaire* **does not** need to be completed when engaging a guest speaker/lecturer for a one-time speaking engagement. You can review the full [Harvard policy here](#) and additional information/resources can be found here: [IC Resources on HCS HR Website](#).



*If you encounter a situation where the guest speaker will be recurring, they cannot be treated as a one time guest speaker/lecturer. A recurring guest speaker/lecturer may be appropriate for the monthly payroll as Temporary Academic. I-9 and appropriate documentation will be required. Contact [Faculty Affairs](#) to discuss and for further guidance.

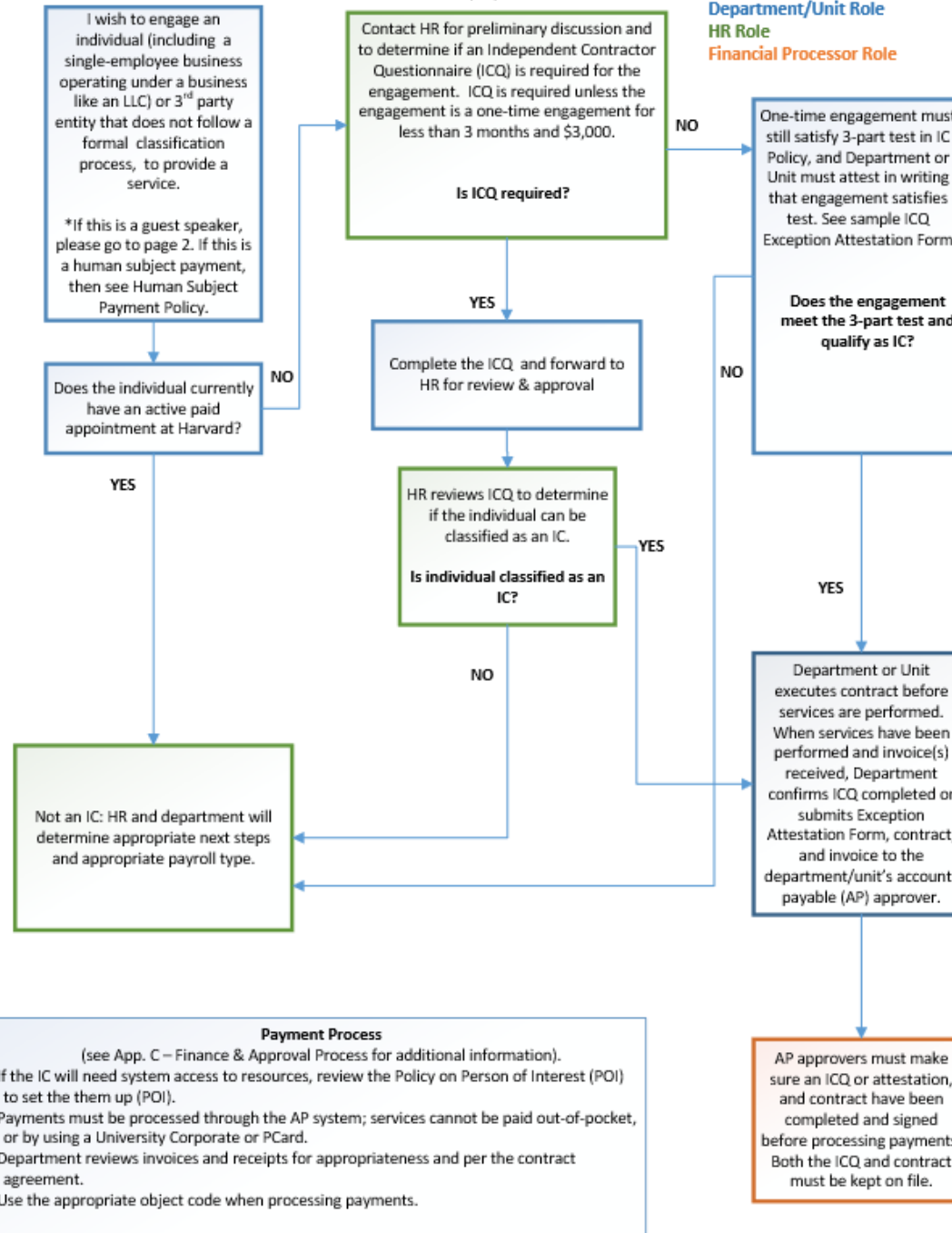
Independent Contractor (IC) Process

REV: 07/01/2019

Department/Unit Role

HR Role

Financial Processor Role



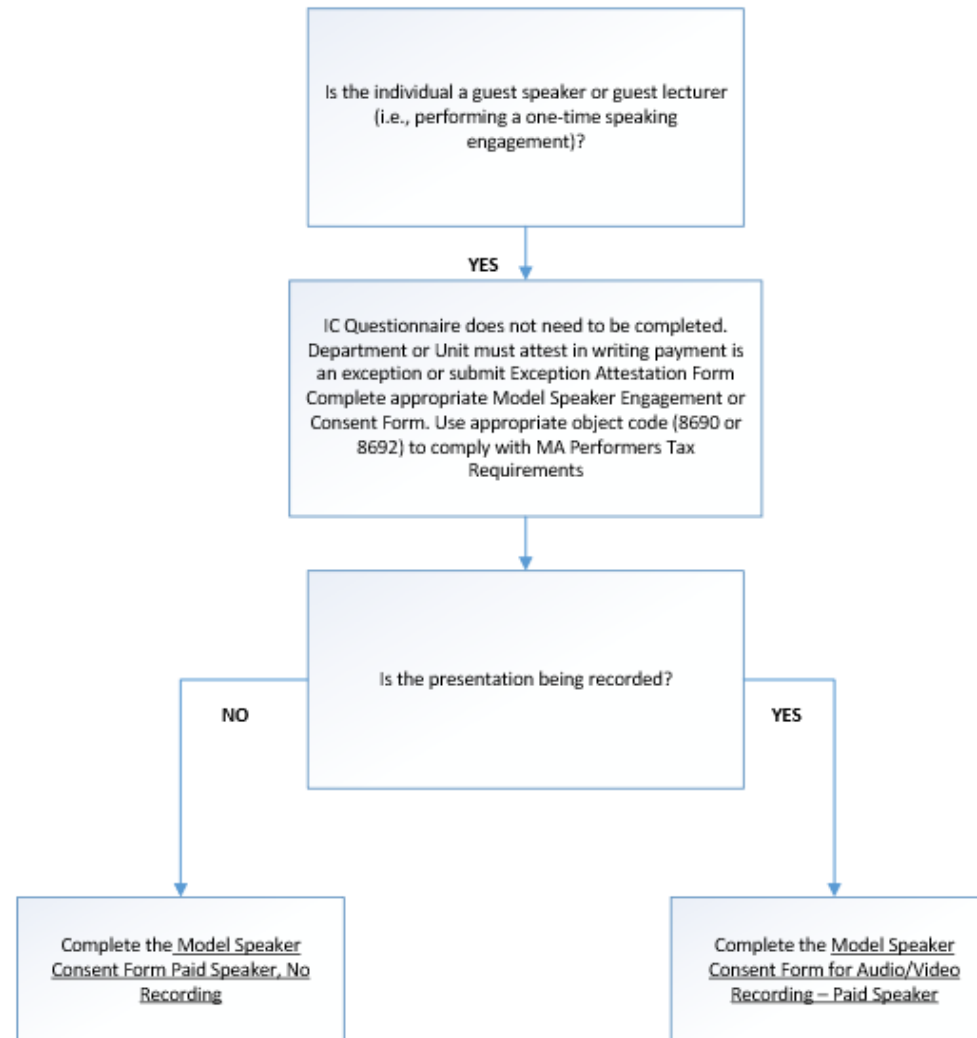
14/24/2020



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

Rev: 07/01/2019



*Guest speakers and lecturers do not require an ICQ for a one-time speaking engagement. Performers and musicians may also fall into this category. Be sure a foreign individual's visa status allows payments prior to offering a payment.

Examples include:

- One-time guest lecturer - 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.
- One-time performing artist.

1/2020



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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 (HCOM/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



Sample of document. Complete document can be found [here](#).

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. 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
MASSACHUSETTS EMPLOYMENT OPTIONS - For individuals classified as employees working in Massachusetts			
<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 – Visiting Undergrad Research Fellow Job Code: 000050 – Visiting Postgrad Research Fellow 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