

CASH DISBURSEMENTS – FOREIGN NATIONALS

GUIDELINES RE PAYMENT:

Payment to foreign nationals (also known as “nonresident aliens”), whether it is for employment, honoraria, reimbursement of expenses, or some other university-related purpose, is subject to many requirements and restrictions and requires special documentation. Be reminded therefore, that the information provided in this section is a general reference only.

*****Contact Ginger Whelley, Assistant Comptroller (301-445-2726) before promising payment to a foreign national and well in advance of his/her arrival.*****

General Documents Required by U.S. Immigration:

The Immigration and Naturalization Service (INS) requires the USM Foundation to have copies of the following unexpired documents on file and available for inspection by an auditor when payment to a foreign national/nonresident alien is required for services/activities performed or reimbursement of expenses need to be made:

- **Visa:** copy of the information page/picture page of the document (optional for Visa Waiver Countries and Canada)
- **I-94 Card:** copy of the front and back of the card governing this admission, or, in the case of a foreign national from a Visa Waiver country, a copy of the Passport page with the I-94 stamp (if a separate card was not issued)

ALERT! Generally the classification written on the Visa agrees with the I-94 entry status. If they differ, it is the I-94, not the Visa that governs the admission of the foreign national and defines what kinds of income/reimbursement are allowed. An I-94 stamp should have a notation by U.S. Customs as to the nonresident alien class upon entry to the United States.

ALERT! Immigration generally staples the I-94 card to the US Visa upon entry to the U.S. and removes the I-94 card upon departure. Make sure you get a copy of the card before the foreign national departs, as the USM Foundation cannot process a payment to him/her without it.

- **Passport:** copy of the information page/picture page
- **Form I-20:** required if on F-1 Visa
- **Form IAP66/DS2019:** required if on J-1 Visa

ALERT! Prior written authorization signed by the "Responsible Officer" (identified on the IAP-66 or DS-2019 form) is required to authorize payment to the foreign national if he/she is sponsored by an institution/organization that is not part of the University System of Maryland.

- **“Notice of Approval” of H-1B petition:** required if on H-B1

*****OBTAIN ALL NEEDED DOCUMENTS BEFORE THE FOREIGN VISITOR DEPARTS*****

❖ **Immigration Definitions:**

Foreign National: a citizen of another country

Nonresident Alien: a foreign national who is allowed entry into the USA for a limited duration of time and sometimes for a specific activity at a single organization; such as, an F-1 student or a J-1 teacher

❖ **Immigration Types:**

B-1	Business Visitor Visa
B-2	Tourist Visitor Visa
WB	Visa Waiver for Business
WT	Visa Waiver for Tourism
F-1	Student Visa
J-1	Teacher/Researcher/Student Visa
H-1B	Specialty Occupation

❖ **Immigration Rules:**

B-1, B-2, WB and WT Visa holders **MUST** sign a statement attesting to specific criteria for each payment. The statement is called “*Nonresident Alien Required Statement Academic Honoraria Payment/Incidental Expense Reimbursement B1/B2 Visa Classification.*”

F, J, and H-1B Visa holders can be paid by the sponsor of their Visa **only**. Since the USM Foundation is affiliated with the USM and thus with the USM campuses, the USM Foundation can pay a Visa holder **if** the Visa is sponsored by a USM institution.

❖ **Visa types and Immigration entry – is the payment legal?**

As already noted, a variety of Visa types are issued to foreign nationals. The classification types identified below are the ones seen and processed most frequently by the USM Foundation with regard to foreign nationals, who, upon admission to the U.S., are associated with a USM institution:

- B-1 or B-2 Entry Status – Persons with B-1 or B-2 entry status can generally receive reimbursement for travel under “Accountable Plan” rules. Honoraria payments may be made, **under very specific circumstances**. Prior to any payment being made, the USM Foundation must have on file a statement signed by the foreign national, which attests to their VISA classification status and any other circumstances that are required to validate their eligibility for payment. **Contact the USM Foundation for the required form.**

- F-1 Entry Status – Persons with this entry status generally can be paid income **if** the F VISA is sponsored by the USM institution that is requesting the payment and **if** other required documentation is supplied to the USM Foundation.
- J-1 Entry Status – Persons with this entry status generally can be paid income **if** the J VISA is sponsored by the USM institution that is requesting the payment and **if** other required documentation is supplied to the USM Foundation. If sponsored by an institution that is not part of USM, income may be paid, provided that prior written authorization from the “Responsible Officer” of their designated program had been secured.

IRS TAXATION:

- ❖ **IRS General Rules:** To receive the compensation/income payment on U.S. source income, the foreign national must already have (or obtain) a U.S. social security number or ITIN number, regardless of I-94 entry status.

The USM Foundation requires Form W-8BEN on file for all foreign nationals who receive a payment.

The general rule for taxation of payments to foreign nationals (except for business expense reimbursements) is to withhold 14% of scholarship payments and to withhold 30% of all other payments.

Foreign nationals do not receive a Form 1099. Form 1042-S is used to report all income payments that are taxed, and all income payments exempted under the reasons specified below. Form 1042 is the annual return filed with the IRS, along with the IRS copies of Form 1042-S.

- ❖ **IRS Tax Exemptions:** There are 3 ways to exempt income payment to a foreign national from tax:
 1. Foreign Source Income Exempt – This is income sourced outside the U.S. There are different sourcing rules, depending upon the type of income being paid.
 - Independent Personal Services are sourced to the location of the activity
 - This type of income must be reported to the individual and to the IRS on Form 1042-S. Be sure to include the complete exact address on the Disbursement Request Form.
 2. Exempt under Internal Revenue Code – This rule applies if the income, by its nature, is exempt by code. An example is qualified tuition payments exempt by Section 117 of IRS Code.
 - Income in this category must be reported to the individual and the IRS on Form 1042-S.

3. Tax Treaty Exempt – Treaties the U.S. has with other countries exempt certain amounts and types of payments from U.S. income tax. The exemption does NOT apply to Social Security Tax withhold, except for those foreign nationals who are classified as F-1 & J-1. Their gross earnings are exempt from taxation for 5 years.
- The foreign national is responsible for knowing about, and asking for an treaty benefit
 - To claim a tax treaty benefit a foreign national must already have (or obtain) a U.S. social security number (SSN) or ITIN number, regardless of VISA status. Prizes and awards are not addressed by tax treaties and are therefore subject to the 30% federal withholding.
 - A Form 8233 must be completed and submitted to the USM Foundation to apply for a treaty benefit. The USM Foundation reviews the 8233, and if it is ok, completes the withholding agent portion and files the form with the IRS. The USM Foundation must wait 10 business days from the date the Form 8233 is mailed to allow the IRS time to respond. If, after the 10 business days, no response from the IRS to deny the treaty benefit has been received, the USM Foundation can allow the treaty benefit.

THE FORM 8233 CANNOT BE FILED WITH THE IRS WITHOUT A SSN OR ITIN

- Income exempted by a tax treaty must be reported to the individual and the IRS on Form 1042-S.

PAYMENTS ALLOWED:

The USM Foundation must prepare and file by 03/15 the IRS Form 1042-S that is required for foreign nationals who received either foreign source income (non-taxable) or U.S. source income (not reimbursement), including income that was exempt under a U.S. tax treaty. A copy of the completed Form is provided to the foreign national.

- ❖ **Reimbursements for qualified business expenses:** To reimburse a foreign national for qualified business expenses (out of pocket expenses on behalf of the university) the following guidelines apply:
 - Copies of documents required by U.S. Immigration (identified above) must be on file with the USM Foundation
 - All original receipts must be submitted
 - Accountable Plan rules apply
 - No SS or ITIN # is needed
 - Not subject to IRS withholding
- ❖ **Compensation for Dependent Personal Services Rendered:** Dependent Personal Services requirements and rules apply when an employee/employer relationship exists:

- Compensation is taxed using the U.S. withholding rates.
- A foreign national can never claim exemption from income tax on Form W-4. He/she must submit copies of all of the general documents specified above, which are required for payment, along with a copy of SSN.
- Nonresident Alien must complete Form W-4 as follows: Single filing status, 0 or exemption
- Nonresident Alien employees can claim tax treaty benefits, if there is a valid dependent persona services article in the treaty between the US and their country
- Nonresident Aliens receive a Form W-2 at the end of the year reporting any wages earned.

❖ **Compensation for Independent Personal Services Rendered:** Honorariums, consulting fees, independent contractor services, stipends, etc. are Independent Personal Services. Compensation to a foreign national for such services requires the following documents/information is provided:

- Copies of documents required by U.S. Immigration (identified above) must be on file with the USM Foundation;
- Copy of the letter/invitation/agreement from the campus department to the foreign national specifying what the payment is for;
- SS # or ITIN # Payment of income to a foreign national cannot be made without a SS# or ITIN #. If an individual does not possess a SS # or ITIN #, the USM Foundation is able to coordinate the application of the ITIN # if requested to do so.

REMINDERS:

All income payments that are taxed, and all income payments exempted under the reasons specified are reported on Form 1042-S, along with the Form 1042 (the annual return filed with the IRS.)

The information in this section is only a general reference for a complex area of immigration and tax law. We cannot include information to cover every circumstance. We strongly urge you to contact the USM Foundation Payroll Administrator (301-445-2723) in advance of the arrival of a foreign national (nonresident alien) that you have invited to your school to ensure you will have all the proper documentation in hand when it is time to request payment or submit required paperwork and/or reports to the IRS.