



# *High-Level Summary of Revised Independent Contractor Policy HMS Office of Research Administration*

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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)



# 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



# 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 will 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 (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



# University Independent Contractor Questionnaire (ICQ) 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 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.**



# Where Policy Does Not Apply and an Independent Contractor Questionnaire (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





# 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:**
  - 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](mailto: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](#) – including ICQ, flow-charts and additional materials (to be uploaded early March)

[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](#) (ROPPE)

[Strategic Procurement Contract Information](#)

[Travel Policy](#)



# Appendices

[Responsibilities for Compliance](#)

[Exception Attestation Form](#)

[IC Process Workflow](#)

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



# 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; contract your tub human resources or finance department for more information

See [IC Process Workflow](#)





### 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: \_\_\_\_\_

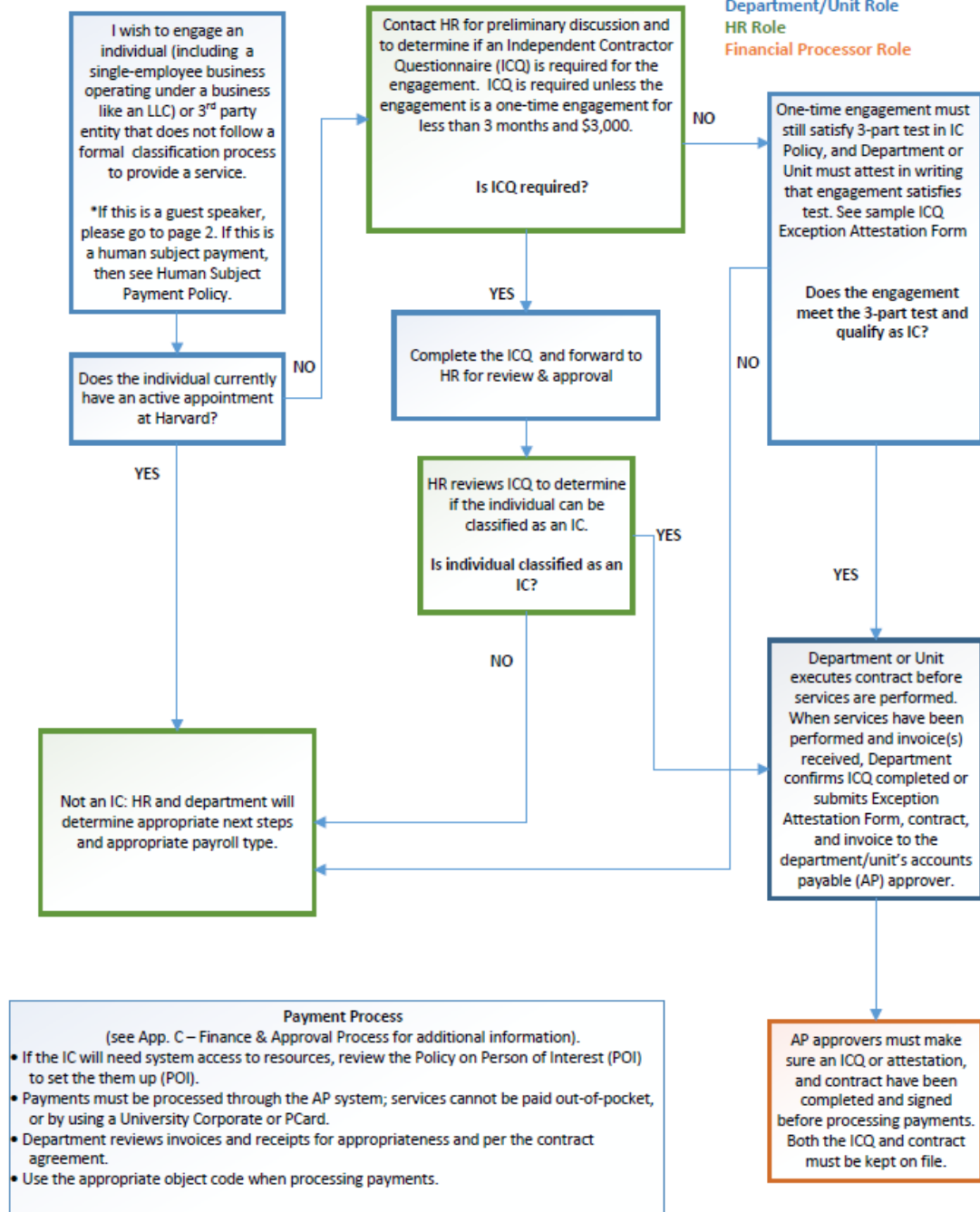
Print Name: \_\_\_\_\_ Date: \_\_\_\_\_



# Independent Contract (IC) Process

REV: 04/01/2019

Department/Unit Role  
HR Role  
Financial Processor Role



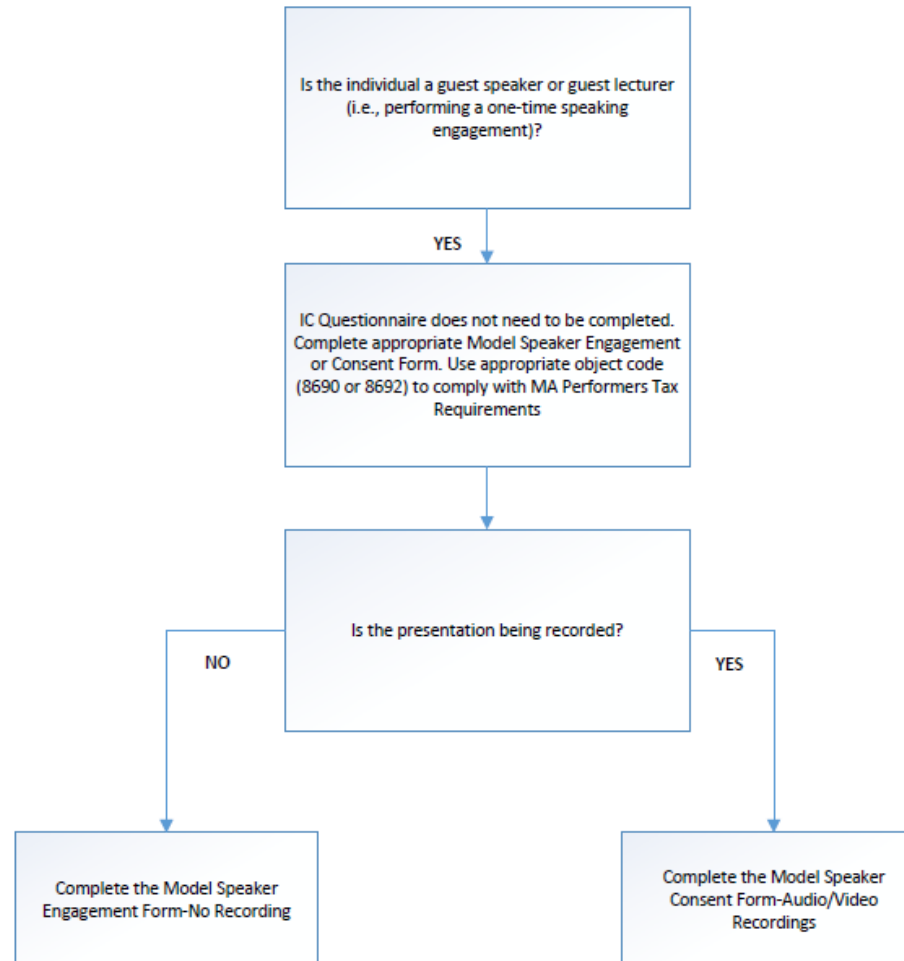
IRA 6/12/19



**HARVARD**  
Financial Administration  
Human Resources Labor & Employee  
Relations

## 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).

