Administrative Policies and Procedures Manual - Policy 2180: Foreign Nationals

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Process Owner: UNM Taxation Issues

1. General

The University hosts and sponsors individuals from other countries as part of the educational, research, and public service mission of the University. These individuals include students, employees, and conference participants. Foreign nationals may provide a variety of services which may, depending on the circumstances, warrant reimbursement.

Payments made to foreign nationals must comply with U.S. Citizenship and Immigration Services (USCIS) and Internal Revenue Service (IRS) regulations, must be allowable by any applicable contracts or grants, and must be appropriately documented. Tax regulations regarding reimbursement or remuneration for foreign nationals may be different from those for legal or immigration purposes. Advance planning (up to several months in some cases) to arrange for payment to foreign nationals is critical to ensure contractual, programmatic, legal, and regulatory compliance. For example, foreign nationals may need to apply for tax identification numbers, which can take up four (4) months to obtain (refer to Section 6.1. herein).

2. Tax Regulations for Foreign Nationals

IRS regulations provide two classifications of taxpayers for U.S. tax purposes: "United States persons" and "foreign persons." The "foreign person" classification includes nonresident alien individuals, foreign corporations, foreign partnerships, foreign trusts, foreign estates, and "any other person that is not a U.S. person." Nonresident alien individuals are defined as individuals who are not U.S. citizens or resident aliens. This policy is concerned only with payments made to nonresident aliens who may be taxed by the U.S. on income they receive from U.S. sources.

Unless proven otherwise, all foreign nationals visiting the University will be classified as nonresident aliens. (U. S. Nationals may be treated as nonresident aliens for tax purposes depending on individual circumstances.) The University uses the following factors to determine if income tax must be withheld from payments made to nonresident alien foreign nationals: immigration status and length of stay, country of tax residency, and type of payment being made. A tax treaty may eliminate or reduce the withholding requirement (refer to Sections 4. & 5. herein). Detailed information can be found at the UNM Taxation Issues website.

3. Immigration Status for Foreign Nationals
The immigration status granted to a foreign national by the USCIS determines whether a payment can be legally made to a foreign national and, if so, what types of payments can be legally made. While a visa may permit entry into or presence in the U.S., it does not necessarily convey legal status to the foreign national for purposes of employment or payment. The immigration status is designated on Form I-94 Arrival/Departure Record completed at the port of entry. The University's Global Education Office (http://geo.unm.edu/) can provide assistance with issues affecting international students and visiting/temporary researchers and faculty. The Office of University Counsel can provide guidance to hiring officials with employment-based immigration issues (http://counsel.unm.edu).

3.1. Visa Waiver Program

The Visa Waiver Program (VWP) enables certain foreign nationals (as identified by the United States Department of State) to travel to the United States for tourism or business for stays of 90 days or less without first obtaining a visa. Such travelers must have a valid Electronic System for Travel Authorization (ESTA) prior to travel. To qualify for VWP status, the purpose of the travel must be permitted on a visitor (B) visa. Payment rules for individuals with VWP status are the same as those with a visitor (B) visa (see below).

3.2. Visitor Visa - B

3.2.1. Business Visitor (B-1) Visa

Whether reimbursement may be given to those on B-1 visas depends on the purpose of the visa holder’s travel. B-1 visa holders may not receive salary or income from a U.S. based entity. Some such visa holders, including lecturers or speakers, may be eligible for reimbursement for expenses incidental to the trip and an honorarium (so long as the activities last no longer than nine days at any single institution or organization and the visa holder has not accepted such payment or expenses from more than five institutions or organizations over the last six months). Others, such as trainees, may be eligible for an expense allowance or expense reimbursement related to their stay.

3.2.2. Pleasure, Tourism, Medical Treatment Visitor (B-2) Visa

UNM can pay honoraria, travel reimbursement, and associated incidental expenses to individuals with B-2 immigration status only for academic activities lasting not longer than nine (9) days at any single institution and only if the foreign national has not accepted such payment from more than five (5) institutions or organizations in the previous six (6) month period.

3.2.3. Border Crossing Cards

Individuals with Border Crossing Cards must be eligible for either a B-1 or B-2 immigration status and are subject to the applicable limitations described above.

3.3. Visas Requiring a Sponsor

These individuals must be sponsored for immigration purposes by a host organization, as approved by USCIS or the US State Department, and are considered “work-authorized” for the sponsoring organization.

3.3.1. Foreign Nationals Sponsored by UNM

If UNM is the sponsoring organization, UNM can pay individuals with an F-1, H-1B, J-1, O-1, P-1-3, or TN immigration status compensation for services, travel reimbursements, and other employment-related payments. There may be limitations associated with the individual’s specific visa placed on the type of work for which UNM can pay. Departments should consult UNM Taxation Issues for details.
Individuals seeking sponsorship by UNM for visa statuses that are not primarily for employment, including F-1, J-1, and P-1-3 status, should consult with their academic department and the University's Global Education Office (http://geo.unm.edu/). Individuals seeking sponsorship for any employment-based visa status, including H-1B, O-1, and TN status, or any employment-based permanent residency sponsorship, should contact their department's hiring official, such as their chair, dean, or director.

In employment-based visa status petitions, the employer is considered the “petitioner” for purposes of submission of the petition. As such, when the University sponsors an employee for employment-based visa status, any petition that is submitted that is associated with such sponsorship is the University’s responsibility to submit. Because employment-based visa status petitions are the University’s responsibility to submit, only individuals authorized to speak on behalf of the University and commit its funds for that purpose are authorized to engage legal counsel and work to submit that petition. Accordingly, employee beneficiaries of the University’s employment-based visa status petitions may not, under any circumstances, submit such petitions on their own behalf, nor may otherwise non-authorized persons submit such petitions on the sponsored employee’s behalf. For more information on the process involved in sponsoring a University employee for employment-based visa status, please contact the Office of University Counsel (http://counsel.unm.edu).

### 3.3.2. Foreign Nationals Sponsored by Another Organization

#### 3.3.2.1. Students with F-1 Designation

In the case of students with an F-1 designation, UNM can make payments to those students who have been issued immigration documents by UNM. Students who are not on UNM immigration documents would need to be authorized for “Practical Training” work authorization to work at UNM. In the case of Curricular Practical Training (CPT) work authorization, the student must have a valid I-20 with a CPT work authorization from the sponsoring institution authorizing the student to work at UNM. In the case of Optional Practical Training (OPT) work authorization, the student must be authorized by the Department of Homeland Security (DHS) and be in possession of a valid Employment Authorization Document (EAD) card, form I-766, and a valid I-20 indicating work authorization for UNM. If the student's sponsoring institution is not UNM and the student has not been authorized for “Practical Training” work permission, the sponsoring institution would need to pay the student. In this case, certain pre-approvals may be required. Depending on the circumstances, UNM may wish to request approval to become the student's sponsor. This request should be coordinated through the Global Education Office.

#### 3.3.2.2. Individuals with H-1B Designation

In the case of individuals with an H-1B designation sponsored by another organization, UNM can only pay a travel reimbursement.

#### 3.3.2.3. Individuals with J-1 Designation

For individuals with a J-1 designation sponsored by another organization, UNM can pay compensation of services, travel reimbursements, and other employment related payments, but UNM must have prior written approval from the individual's sponsoring organization. The approval must be signed by a Responsible Officer of the organization or program designated on the foreign individual's Form DS-2019.

#### 3.3.2.4. Individuals with O-1, P-1-3, & TN Designations

In the case of individuals with O-1, P-1-3, and TN designations, UNM can only make payments to those sponsored by UNM or to the individual's sponsoring organization. The sponsoring organization would then need to pay the individual. Certain pre-approvals may be required.

### 4. Tax Treaties
Some countries have entered into tax treaties with the U.S. which reduce or eliminate the income tax withholding requirements. These treaties vary from country to country and may have specific requirements as to visa type, activity, types of payments, duration of stay, prior visits, and previous treaty benefits taken. IRS requires a tax identification number for any payee who wants to claim treaty benefits. Refer to Section 6.1. herein for information on tax identification numbers. For more specific information on treaty benefits departments should contact the University Payroll Department (for information on foreign nationals who are employees) and UNM Taxation Issues (for information concerning all other foreign nationals).

5. Types of Payments

The type of payment and the individual's country of tax residency determines whether the University must withhold a portion of the payment for income tax purposes.

5.1. Travel Reimbursement

Travel reimbursements complying with IRS regulations are not subject to income tax withholding.

5.1.1. UNM Employees

Foreign nationals who are UNM employees may be reimbursed for travel expenses in accordance with UAP 4030 ("Travel").

5.1.2. Non-UNM Employees

Per IRS regulations foreign nationals who are not UNM employees may be reimbursed for actual lodging and meal expenses (receipts required) or actual lodging (receipts required) and the meal per diem rate allowed by IRS.

5.2. Services

5.2.1. UNM Employees

Payments made to UNM employees through the Payroll Department are subject to FICA (social security), Medicare, federal, and state tax withholding unless the payee is eligible for and claims treaty benefits, which may reduce or eliminate the amount withheld. Withholding from employees, including student employees, will be at graduated rates.

5.2.2. Honorarium and Independent Services

Payments to non-employees, such as conference participants and independent contractors, are subject to federal tax withholding at a thirty (30) percent rate unless the payee is eligible for and claims treaty benefits.

5.3. Scholarships and Fellowships

Foreign national students who receive scholarships from the University are subject to the same rules as U.S. citizens/permanent residents as to whether or not the award is taxable. Qualified scholarships or fellowships can be excluded from taxable income if the individual is a candidate for a degree, broadly defined to include any full- or part-time student enrolled at an institution that grants degrees, and the funds are used to pay for tuition and fees required for attendance or other mandatory fees, books, supplies, and equipment required of all students in a particular course of study. Portions of awards used for meals, lodging, non-mandatory medical insurance, travel, personal living expenses, non-mandatory course expenses or other non-course related expenses must be included in taxable income unless excluded by tax treaty.

Foreign national students under immigration status F-1 and J-1 who are tax non-residents are subject to fourteen (14) percent income tax withholding on the taxable portion of awards. Tax treaty benefits for scholarship or fellowship income may be issued at UNM’s discretion (see Section 4 above).

5.4. Royalties
Royalty payments for distribution or usage within the U.S. are subject to income tax withholding at a rate of thirty (30) percent, unless the payee is eligible for and claims treaty benefits, which may reduce or eliminate the amount withheld.

6. Taxability Requirements

6.1. Tax Identification Numbers

Individuals receiving compensation must have a social security number (SSN) or apply for one. Individuals receiving honoraria payments must have a SSN or apply for one or have an individual taxpayer identification number (ITIN). This number must be used on all disbursement documents along with a notation that the payee is foreign. If the individual has previously studied and/or worked in the U.S., he or she may already have a SSN.

Only noncitizens authorized to work in the United States are eligible to receive a SSN. Individuals who are not authorized to work in the United States and therefore not eligible for a SSN must have an ITIN for the University to fully process payment. Processing for an ITIN takes approximately four months or longer, so departments should contact UNM Taxation Issues as soon as possible. Instruction on how to obtain a SSN or ITIN can be found on the UNM Taxation Issues website or by contacting UNM Taxation Issues. Students on F or J visas where UNM is the sponsor who are receiving taxable scholarship or fellowship payments from UNM can apply for an ITIN number with the assistance of the Global Education Office.

6.2. IRS Reporting

All payments made to foreign nationals, other than travel reimbursement, are reported to the IRS. A copy of the reporting form (1042S or W-2) is sent to the foreign national for use in completing his or her personal income tax return.