

HARVARD UNIVERSITY



Guidance Regarding Individuals Outside of the United States Being Paid with Sponsored Funding

Effective: January 1, 2021

Background

Harvard University issued a new interim guidance for [Payroll Processes During the COVID-19 Public Health Emergency](#). The guidance is effective 1/1/2021 and places restrictions on payroll payments to individuals outside of the U.S., requiring that individuals who do not, or cannot, return to the United States by January 1, 2021, or shortly thereafter, to either:

- A. Take an unpaid leave of absence (with approval of HR or Academic Affairs Office),
- or
- B. In coordination with HR or Academic Affairs Office, transition employment to a Harvard Affiliate, Local Partner, or Professional Employment Organization (PEO).

This interim guidance recognizes that individuals being paid with sponsored funding may be subject to additional restrictions around working outside of the United States as well as what may be charged to the award. The external payroll charged to a Federal award cannot be more than what would be charged to the award if the individual was on the Harvard payroll with or without any PEO charges. In general, PEO charges for administrative costs (e.g., payroll processing, legal/tax related expenses, etc.) which are covered by F&A may not be allowed on Federal awards unless specific prior approval has been obtained from the agency; nonfederal awards may have more discretion.

The purpose of this document is to provide additional guidance on the use of sponsored funding for payment of salaries for individuals who are outside of the U.S. Note that this is specifically for those who would work on campus but are abroad due to travel restrictions, visa issues, or other personal reasons.

Note: Schools may have established their own criteria and guidance about whether Harvard Affiliates or PEOs should be used. In these instances, the local instruction shall take precedent over this Guidance on a case-by-case basis. All other requirements of this guidance will apply.

Guidance

Payment of salaries from sponsored funds to individuals who are living or residing outside of the United States is subject to a number of legal, regulatory, and funder specific requirements. **Therefore, any such payments must be reviewed on a case-by-case basis to ensure compliance with the requirements;** the following provides a summary of the key requirements for such reviews.

General Requirements

The following general requirements are applicable to all individuals outside of the U.S., regardless of the source of funding, such as:

1. **Export Control:** Prior to authorizing salary or contracted services payments to any individual who lives or resides outside of the U.S., the School Export Control Administrator must verify that the individual is not subject to any restrictions (e.g., specially Designated Nationals List), and that there are no restrictions on the transfer of funds to the country where the individual resides (e.g., sanctioned countries such as Iran). It is further recommended that should any foreign individual be involved in research, even if unpaid, they be reviewed in this manner.
2. **Data Security and Privacy:** Participation of individuals from outside the U.S. with access to research data may have specific data security and privacy requirements (e.g., GDPR, remote access via VPN, availability of two factor authentication, etc.). Please consult with your School Data Security Officer to determine any requirements.
3. **Research Materials:** If equipment or research materials will be sent abroad, issues relating to export controls, MTA, and potentially import restrictions must be reviewed.
4. **Tax Implications:** Wages earned for services performed outside of the United States may be subject to both local and U.S. taxes (e.g., income social security/retirement taxes or local equivalent) for both the employee and employer. Employees may wish to consult with a tax advisor regarding their personal tax situation.

5. **Currency:** Fluctuations in currency and exchange rates, as well as transfer fees, may affect the individual's net pay; as a result, you will need to make allowances for such variations (e.g., reach an agreement with the employee for fixed local pay, or fixed U.S. currency).

Note: The terms and conditions of the award must be reviewed to ensure that variable pay due to currency fluctuations, or transfer fees, are allowable.

6. **Employee Type:** It is important to determine an employee's correct classification and pay them appropriately (e.g., if the individual will be paid as an employee (PEO or by an affiliate) or as purchased services/independent contractor) as each have different requirements and may require contractual agreements. Please consult your School HR.

Note: Harvard Global Support Services (GSS) will help departments review and implement relevant employment options outside the United States (PEO or other entity). Please consult your School's GSS consultant for further information.

7. **Visa Requirements:** Payment to individuals outside of the U.S. may have visa requirements or implications (e.g., post-doctoral fellows or scientists whose visas are sponsored by the University). Please consult Harvard International Office (HIO) for determining if there are any special visa issues that need to be addressed prior to paying the individuals.
8. **Local laws and Jurisdiction:** Individuals doing research abroad are subject to their country laws related to research, e.g. animal or human subjects, data, anti-bribery, and sensitive or controversial research topics (abortion, stem cells, genetic modification etc.).

Sponsor Requirements

In addition to the general requirements listed above, there may be sponsor specific requirements or restrictions on paying an individual outside of the U.S. Agency requirements and the award terms and conditions must be reviewed to ensure the allowability of such payments prior to payments being issued to individuals living or residing abroad. The following is a brief listing of major requirements:

1. **Funding Availability:** The award budget must be reviewed to ensure that any payments are approved and budgeted for. Examples of questions to ask as part of the review include:

- A. Does the award have funds budgeted for the individual to be paid either as an employee, purchased services, or as a contractor/consultant?
 - B. If the funding is for payments to employees but the individual will be paid as a contractor/consultant or by purchasing services, does it require prior agency approval for re-budgeting?
 - C. Do allowances need to be made to address fluctuations in currency or additional taxes and if so, does the sponsor permit such allowances?
 - D. Is this an existing employee unable to return due to COVID-19 or a new recruit? For new recruits please consult HIO to identify any potential visa or other restrictions/issues.
2. **Sponsor Notifications:** Agency notification requirements must be reviewed to determine if any prior approvals are required. Prior approval should be obtained in writing and included with the grant documentation in GMAS. Examples of agencies with restrictions include:
- A. **National Institutes of Health:** For NIH awards, paying an entity or institution outside of the U.S. could be subject to disclosure to or approval by NIH; please consult with the NIH Grant Management Office prior to placing an individual's salary payments on an NIH award. Paying an individual outside the U.S. is not considered to be reportable as a foreign component.¹
 - B. **National Science Foundation:** NSF has certain restrictions on payments of salaries or support for non-U.S. persons outside of the U.S.
 - C. **Department of Energy:** Depending on the type of the award and the specific terms and conditions, DOE requires approval of foreign nationals for inclusion in, or being paid from, awards funded by the DOE.
 - D. Please consult with OSP or you School Research Administration Office on specific agency requirements.

¹NIH FAQ issued as part of its COVID-19 flexibilities indicates that there are no funds going to a foreign entity. [See FAQ V.1. Foreign Components](#): “If a post-doc on an active NIH grant must return home, to a foreign country, and work remotely due to COVID-19, must this be reported to NIH as a foreign component? For post-docs that are required to work on their originally approved work remotely from a foreign country due to COVID-19 travel restrictions, where no grant funds are going to a foreign entity, NIH has determined that this scenario does **not** constitute the performance of a significant scientific element or segment of the project outside the US, as outlined in the [NIH Grants Policy Statement](#) definition of a foreign component.”

3. **Effort Reporting:** Key personnel or individuals with effort commitments on federal awards who are not on Harvard payroll must have an alternative effort certification as they will not be in the effort reporting system. [Contact Judith Ryan in OSP for sample forms.](#)

Based on the information above, it is a prudent and necessary practice to review payments to individuals outside of the U.S. working on a sponsored award on a case by case basis. Once the review is completed, document the allowability of payments in GMAS and/or the individual's HR file to help ensure compliance with any regulatory or funding requirements.

For additional questions please contact OSP, ORA, or your School Sponsored Programs office.