

New York University

UNIVERSITY POLICIES

Title: Independent Contractor, Honorarium, and Guest Expense Reimbursement Policy & Procedure
Effective Date: December 9, 2019
Supersedes: N/A
Issuing Authority: Executive Vice President
Responsible Officer: Chief Financial Officer

Statement of Policy

This Policy of New York University (“NYU” or the “University”) sets forth the following processes and procedures when: (I) retaining Independent Contractors; (II) awarding Honoraria; and (III) reimbursing guests for out-of-pocket expenses for meals, travel, and lodging incurred in connection with their visit to the University (hereinafter, “Guest Expense Reimbursement”). ((I)-(III) collectively, “Covered Arrangements.”)

To Whom the Policy Applies

This Policy applies to Covered Arrangements performed or taking place in the United States. For Covered Arrangements performed or taking place outside of New York, the District of Columbia, or California, please consult with Procurement and/or the Office of General Counsel for the appropriate process and procedures.

Definitions

Honorarium: is defined, for purposes of this Policy, as University funds that may be used for a payment or item presented as a gesture of good will or in appreciation of efforts and time given by individuals to the University, such as a guest lecturer or a speaker from outside the University. The University requires that such expenses be reasonable and made under conditions or circumstances that do not create a significant likelihood for the gesture to be deemed a “disguised” payment. When prohibited by a federal, state, or city agency (e.g., NIH), such costs must not be charged directly or indirectly to a sponsored account. Please consult the applicable sponsor guidelines.

i-Buy NYU: is defined as the University’s requisitioning, invoicing, and payment system for goods and services.

Independent Contractor: is defined, for purposes of this Policy, as an Individual who provides NYU with services for payment, in a capacity other than as an employee, and in such a manner that otherwise satisfies the criteria for classification under this Policy and applicable law. Payment for Independent Contractor services shall be reported to the IRS on a Form 1099 (not a W-2).

Independent Contractors are not employees of the University and, therefore, are not eligible for employee benefits or recognition programs, or for titles reserved for employees.

Individual: is defined, for purposes of this Policy, as any person or any organization composed of no more than one person, including a sole proprietor or single-member LLC.

Member of the Same Family or Household: is defined, for purposes of this Policy, as a spouse or domestic partner or person in a civil union or similar relationship, dependent children, and any other family members residing in the same household as a University employee.*

*A University employee may not retain or oversee any Individual who will be providing services to the University under a Covered Arrangement where that Individual is a Member of the Same Family or Household as the employee. A University employee must disclose to the Office of Compliance and Risk Management (“Compliance”) if any Member of the Same Family or Household will be or is: (i) providing any services to the University as an Independent Contractor (as those services are defined in Article I below); or (ii) receiving an Honorarium (as defined in Article II below) from the School or Unit in which the employee is employed.

Policy & Procedures

I. RETAINING INDEPENDENT CONTRACTORS (OTHER THAN HONORARIA RECIPIENTS)

Before a School or Unit may retain an Independent Contractor, the parties must abide by the following step-by-step process, as applicable. (This section does not apply to Honorarium recipients; for such arrangements, please see Section II below.)

Pre-Step 1 (Sponsored Projects): Where an Individual will be performing work on sponsored projects managed by NYU’s Office of Sponsored Programs (“OSP”), the School or Unit must first, ***before proceeding to Step 1 below***, email OSP at osp.agency@nyu.edu. OSP will then review the proposed work and determine, in accordance with sponsored project guidelines, whether the Individual should be classified as a subrecipient (in which case this Policy would not apply), or as a prospective Independent Contractor (in which case this Policy would apply). Where OSP classifies the Individual as a prospective Independent Contractor, OSP will inform the School or Unit (with copy to Procurement) that it should proceed through the steps outlined in this Policy before the Individual may commence work.

Step 1: School or Unit Must Make a Request to Add Prospective Independent Contractor to i-Buy NYU

Where a School or Unit is seeking to retain an Independent Contractor, a representative authorized by the School or Unit must log into i-Buy NYU, and make the appropriate request to Procurement to add the prospective Independent Contractor to the system. This process includes satisfying the requirements set forth in the subsections below.

A. Independent Contractor Classification Questionnaire

A representative authorized by the School or Unit must first complete the Independent Contractor Classification Questionnaire in i-Buy NYU. **Before answering the questions below, the representative from the School or Unit shall contact the appropriate individuals or offices as needed (e.g., contact PeopleLink to confirm the answer to question A(i) below).*

Preliminary Questions. The preliminary questions include the following three inquiries:

- (i) Is the prospective Independent Contractor currently employed by NYU, or was the prospective Independent Contractor previously employed by NYU within the past calendar year?
- (ii) Is the prospective Independent Contractor restricted from providing services to more than one client?
- (iii) Will the prospective Independent Contractor's methods or activities be controlled or directed by an NYU employee?

If the answer to **any** of the above questions is “**Yes**,” then the Individual is ineligible to provide services to the University as an Independent Contractor and must be paid for any such services through payroll, unless a waiver is granted by Employee Relations as set forth in Section C(1) “Waivers” below.

Supplemental Questions. In addition to answering the three preliminary questions above, the representative from the School or Unit must answer five supplemental questions. These questions are designed for the purpose of further determining whether an Individual may be properly classified as an Independent Contractor under applicable law and guidelines. The criteria evaluated in making this determination include a number of factors, with questions covering the following:

- (iv) Will NYU provide training to the prospective Independent Contractor on the manner in which the work should be performed?
- (v) Will the prospective Independent Contractor be retained for an indefinite period of time?
- (vi) Will the prospective Independent Contractor be providing the same services as those provided by an NYU employee?
- (vii) Will the prospective Independent Contractor be required to attend NYU employee meetings other than to get background project information or to give project reports?
- (viii) Will the prospective Independent Contractor be managing NYU employees in their performance of regular work duties?

If the answer to **two (2) or more** of these five (5) supplemental questions is “**Yes**,” then the Individual is ineligible to provide services to the University as an Independent Contractor and must be paid for any such services through payroll, unless a waiver is granted by Employee Relations as set forth in Section C(1) “Waivers” below.

B. Independent Contractor Conflicts Questionnaire

A representative authorized by the School or Unit also must complete the Independent Contractor Conflicts Questionnaire in i-Buy NYU. This Questionnaire consists of the following question:

- (i) Does the prospective Independent Contractor have a Member of the Same Family or Household who is employed by the University?

If the answer to the above question is “**Yes**,” then the Individual is ineligible to provide services to the University as an Independent Contractor, unless a waiver is granted by Compliance as set forth in Section C(2) “Waivers” below.

C. Waivers

To seek a waiver from the requirements in Sections A and/or B above, a representative authorized by the School or Unit must complete the applicable Waiver Request Form in i-Buy NYU. A request for waiver will be construed narrowly. Procurement will only proceed with the registration of the prospective Independent Contractor in i-Buy NYU when the applicable Waiver Request Form receives all necessary approvals. The applicable Waiver Request Form will be retained in i-Buy NYU.

1. Section A Waiver Requests - Independent Contractor Classification Questionnaire

To request a waiver from any of the requirements set forth in Section A above, a representative authorized by the School or Unit must complete the [Waiver Request Form \(Independent Contractor Classification Questionnaire\)](#), which will be directed through i-Buy NYU to the Assistant Vice-President, Office of Employee Relations (“AVP, Employee Relations”) for review. A request for waiver may only be granted where the AVP, Employee Relations determines that there is a sufficient basis to proceed with the Independent Contractor classification.*

***Note – Section A(i) Waiver Requests.** If the answer is “**Yes**” to Question A(i) above (*i.e.*, the prospective Independent Contractor is currently employed by NYU or was previously employed by NYU within the past calendar year), then the AVP, Employee Relations shall review the request and determine whether, at a minimum, the Individual’s proposed services as an Independent Contractor are sufficiently distinct from his or her current or prior responsibilities of employment. Where the prospective Independent Contractor is/was Full-Time Faculty or Professional Research Staff, the AVP, Employee Relations shall consult with the Associate Provost for Academic Appointments, as necessary and appropriate, before deciding whether to grant the waiver.

If the request for waiver is approved by the AVP, Employee Relations, it will then be directed through i-Buy NYU to the Chief Global Compliance Officer to determine whether any conflict of interest otherwise exists under applicable University policy. If the Chief Global Compliance Officer determines that a conflict of interest exists, a waiver may only be granted when the Chief Global Compliance Officer approves of a conflict management plan. A Section A(i) request for waiver is not deemed to have been granted unless and until both the AVP, Employee Relations and the Chief Global Compliance Officer have provided approval in i-Buy NYU.

2. Section B Waiver Requests – Independent Contractor Conflicts Questionnaire

To request a waiver from any of the requirements in Section B above, a representative authorized by the School or Unit must complete the [Waiver Request Form \(Independent Contractor Conflicts Questionnaire\)](#), which will be directed through i-Buy NYU to the Chief Global Compliance Officer for review. If the Chief Global Compliance Officer determines that a conflict of interest exists under applicable University policy, then a waiver may only be granted where the Chief Global Compliance Officer approves of a conflict management plan. *As a matter of Policy, a University employee may not retain or oversee any Individual who will be providing services to the University as an Independent Contractor where that Individual is a Member of the Same Family or Household as the employee.*

D. Approval/Rejection of Request

Where the request is approved to the Independent Contractor Classification and Conflicts Questionnaires (including if a waiver is granted), then the process will proceed to Step 2 below. Where the request is not approved (including if a waiver is not granted), the Individual may not be classified as an Independent Contractor. In that case, the School or Unit may contact the applicable HR Officer or Business Partner to determine whether the Individual can provide the proposed services to the University as an employee.

Step 2: Prospective Independent Contractor Must Register Successfully in i-Buy NYU

Once Step 1 has been successfully completed and Procurement has approved the request to add the prospective Independent Contractor, Procurement will electronically invite the prospective Independent Contractor to register in i-Buy NYU. The prospective Independent Contractor must, in turn, complete the applicable steps of the registration process.

Registration requires that a prospective Independent Contractor provide an overview of company/business details; address, location, and other contact information; certain insurance information; payment and tax-related information, and other additional information.

The prospective Independent Contractor also must answer the following two questions:

- (i) Is the prospective Independent Contractor restricted from providing services to more than one client? (*the same as question (ii) in the Independent Contractor Classification Questionnaire*); and
- (ii) Does the prospective Independent Contractor have a Member of the Same Family or Household who is employed by the University? (*the same as question (i) in the Independent Contractor Conflicts Questionnaire*).

If the prospective Independent Contractor answers “Yes” to either question, then the Individual is ineligible to provide services to the University as an Independent Contractor, unless a waiver is granted in accordance with Section C “Waivers” above.

To successfully complete the registration process, the prospective Independent Contractor must electronically sign and certify that the information provided is true and accurate.

Step 3: Approval Process & Entering into Agreement

Procurement will review and approve the prospective Independent Contractor's registration in i-Buy NYU. Upon approval, the School or Unit must enter into a written agreement with the Independent Contractor before services can commence. The parties shall use the University's [Master Independent Contractor Agreement](#) unless Procurement or the Office of General Counsel expressly approves the use of another agreement. The completed agreement must be provided to Procurement as support for the creation and approval of a purchase requisition in i-Buy NYU before related services commence. The Independent Contractor shall be paid for any and all services rendered through Accounts Payable and reported to the IRS on a Form 1099, in accordance with the terms and conditions of the applicable agreement.

Step 4: Re-Engagement (As Applicable)

Should a School or Unit seek to re-engage an Independent Contractor who has concluded providing services to the University or after the agreement between the Independent Contractor and the respective School or Unit has expired, both parties must update the information requested as part of the registration processes described above, if and as necessary. In addition, upon receiving any necessary re-approvals, to the extent the agreement between the parties does not automatically renew, the parties must enter into a written renewal of the agreement, or a new agreement using the University's [Master Independent Contractor Agreement](#) unless Procurement or the Office of General Counsel expressly approves the use of another agreement. The completed agreement must be provided to Procurement as support for the creation and approval of a purchase requisition in i-Buy NYU before related services commence.

II. AWARDING HONORARIA

Step 1: School or Unit Must Make a Request to Add the Prospective Honorarium Recipient to i-Buy NYU

Before an Honorarium activity may commence, a representative authorized by the School or Unit must log into i-Buy NYU and make the request to add the prospective Honorarium recipient to the system. The representative must answer the following two preliminary questions in i-Buy NYU, and follow the instructions set forth below if the answer to either question is “**Yes.**”

(i) Is the prospective Honorarium recipient currently employed by NYU? **The representative from the School or Unit shall contact NYU PeopleLink to confirm whether or not the prospective Honorarium recipient is currently employed by NYU.*

If the answer to question (i) is “**Yes,**” (i.e., the prospective Honorarium recipient is currently employed by NYU), then any such payment will be deemed additional compensation and, therefore, must be made through Payroll and reported to the IRS on a Form W-2.

(ii) Will the prospective Honorarium recipient be receiving an Honorarium from the School or Unit in which a Member of the Same Family or Household is employed by the University? **The representative from the School or Unit shall contact the prospective Honorarium recipient to confirm whether or not*

¹ Although Office of General Counsel can approve the terms of an agreement, agreements should generally be submitted to Procurement for appropriate review.

the prospective Honorarium recipient will be receiving an Honorarium from the School or Unit in which a Member of the Same Family or Household is employed by the University.

If the answer to question (ii) is **“Yes,”** then the request will be directed through i-Buy NYU to Compliance for review. Compliance shall review the request and inform Procurement through i-Buy NYU whether it has approved or denied the request. Procurement will in turn inform the respective School or Unit of the decision. The prospective Honorarium recipient is ineligible to engage in the Honorarium activity unless Compliance has provided approval. *A University employee may not retain or oversee any individual to receive an honorarium where that individual is a Member of the Same Family or Household as the employee.*

Step 2: School or Unit Must Enter into An Honorarium Agreement

Once Step 1 has been successfully completed and Procurement has approved the request to add the prospective Honorarium recipient to i-Buy NYU, before the Honorarium activity may commence, the Honorarium recipient and the respective School or Unit must complete and sign the University’s [Honorarium Agreement](#) or another agreement expressly approved by Procurement.

Step 3: Completing Honorarium Activity

Upon successful completion of Steps 1 and 2, the Honorarium recipient may engage in the Honorarium activity for the respective School or Unit.

Step 4: Honorarium Recipient Must Register in i-Buy NYU

The respective School or Unit shall inform Procurement of the Honorarium activity, and Procurement will then invite the honorarium recipient to register in i-Buy NYU.

As part of the registration, the Honorarium recipient must review and, if accurate, certify the answers that the School or Unit provided in response to the preliminary questions (i)-(ii) above. Upon successful certification, the registration process will continue and will include the Honorarium recipient providing address, location, and other contact information; payment and tax-related information; and other additional information. Upon successfully completing the steps required for registration, the Honorarium recipient must certify that the information provided is true and accurate.

Once the Honorarium recipient has successfully completed the registration process in i-Buy NYU, a representative from the School or Unit must attach the completed and signed Honorarium Agreement to i-Buy NYU’s *Honoraria and Limited Engagement Form*. Payment of the honorarium will be made through Accounts Payable (except as noted above) within 30 days of the successful completion of the Honorarium activity and registration process in i-Buy NYU.

Step 5: Additional Honoraria (if applicable)

If the Honorarium recipient was successfully registered in i-Buy NYU in connection with the receipt of a prior Honoraria, then the Honorarium recipient does not need to re-register in i-Buy NYU, unless the information previously provided needs to be revised or updated. The Honorarium recipient can revise or update information through the i-Buy Supplier Portal.

III. REIMBURSING GUEST EXPENSES

This section of the Policy only pertains to reimbursing guests of the University. Employee reimbursements are processed via AP Workflow, and student reimbursements are processed via the Student Expense Reimbursement Form (EXP2000S) and/or the Student Awards & Prizes Form (EXP3000S).

A School or Unit may agree to reimburse guests for out-of-pocket expenses for meals, travel, and lodging incurred in connection with their visit to the University, consistent with the University's [Business Expenses Policy](#). A representative authorized by the School or Unit must adhere to the steps set forth in the *Supplier Request Form for Guest Reimbursement* in i-Buy NYU (which includes providing the name of the guest, his or her address and contact information; and the requisite payment information).^

^Request for reimbursements that Accounts Payable determines are [taxable](#) may not be processed through the Supplier Request Form for Guest Reimbursement. In such cases, a change order will be required to modify an existing purchase order to create a separate line for the expense reimbursement.