LOYOLA UNIVERSITY CHICAGO
DISBURSEMENT SERVICES
WORKER CLASSIFICATION PROCEDURE

PROCEDURE DATE – APRIL 1, 2013

TABLE OF CONTENTS

I. PURPOSE
II. TO WHOM THIS PROCEDURE APPLIES
III. RESPONSIBILITY
IV. DOCUMENTATION
V. WORKER CLASSIFICATION CRITERIA
VI. QUARTERLY REVIEW AND CERTIFICATION RENEWAL
VII. SOURCES AND IMPORTANT LINKS (subject to change)
I. PURPOSE

This procedure promotes the proper stewardship and general guidelines for the appropriate and legal uses of LUC funds. The University receives, from a variety of sources, funds that carry with them certain fiduciary responsibilities. Inherent in these responsibilities is the requirement to operate the institution under guidance set forth by the Board of Trustees, to follow Generally Accepted Accounting Principles (GAAP), and to comply with all federal, state, and local rules and regulations while supporting the University's mission. The purpose of this procedure is to document current rules and regulations along with the proper procedures that must be followed when contracting and classifying an Independent Contractor (IC) or employee. This document is meant to identify evaluation and review criteria in order to establish the appropriate relationship between Loyola University Chicago and the IC or employee.

Any individual that is providing a service to LUC is considered an employee unless justification can be provided to otherwise classify said individual as an Independent Contractor. As the Internal Revenue Service and other Federal agencies expand their scrutiny of IC vs. employee classification, it has become increasingly more important to protect both the University and the payee in the event of program audits. It is imperative to be aware of and communicate to all parties’ relevant policy and procedures. In addition, workers should be advised to contact their personal tax advisor to properly identify and address any potential tax implications associated with each type of classification.

II. TO WHOM THIS PROCEDURE APPLIES

1. Individuals with decision making authority on the stewardship of LUC funds.
2. Individuals with budget administration and supervisory responsibility for LUC budgets.
3. Individuals responsible for the identification and selection of Independent Contractors and Employees.
4. Individuals who initiate, review, approve, process, or record financial transactions on behalf of the University.

III. RESPONSIBILITY

The President, Vice Presidents, Deans, Directors and Budget Administrators are responsible for assuring that within their administrative units or colleges/schools:

1. All necessary documentation is completed and evaluation/classification is determined before any services are rendered. This includes any changes or modifications to existing relationships, agreements or engagements.
2. Budgeted funds are available to meet all commitments.
3. Proper authorization for the award is obtained before any commitments are made.
4. All engagements are reviewed and approved by necessary Human Resources and Finance representatives in order to ensure that proper classification is made.
5. Tax implication of awarded amounts are identified and appropriately communicated to each recipient.
6. The potential benefits of the engagement justify its presentation (i.e., existing employees performing the services vs. hiring an IC).
7. All expenditures follow appropriate LUC policies regardless of the source of funds.
8. There is recognition of the added conditions placed on expenditures paid from federal and/or state funds or from restricted gifts and those restrictions are accounted for when expenditures are planned.

Note: Contingency, Grant, Gift, Start-up and Research Stimulation Funds are all University funds and are subject to the restrictions outlined in this document.

IV. DOCUMENTATION

It is the policy of Loyola University Chicago to properly document each request for a worker classification of an independent contractor. As a basic rule, this documentation should be considered necessary if the worker being paid is an individual or sole proprietor providing a service. Some
exceptions to this rule do apply such as for Speaking Honorarium, Note Taking, Fellowship and Scholarship. Please contact Human Resources or Disbursement Services in advance to determine if this documentation is needed.

The following documentation is required of each potential Independent Contractor:

- Independent Contractor Review Form
- Form W-9: Request for Tax Payer Identification Number and Certification
- Form W-8BEN: Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (for non-US payees)
- A Signed Contract or Letter of Agreement
- Certificate of Liability Insurance (if necessary)
  - Each type of engagement is unique and may require different types of insurance. Please contact Risk Management at extension 57861 to confirm the type necessary for your circumstances.

Please note that no payment will be made unless all completed documentation has been submitted and certified by the appropriate members of the Human Resources Department, Disbursement Services or Financial Services.

V. WORKER CLASSIFICATION CRITERIA

It is of the utmost importance for the university to properly classify payees in order to maintain proper reporting and compliance with federal regulations. As a general rule of thumb all individuals that are providing a service are considered employees unless justification can be provided to otherwise classify those individuals as Independent Contractors. All Independent Contractor classification requires a department to complete and submit the above documentation to Human Resources Department, Disbursement Services or Financial Services for evaluation and review. Additional review is completed by Financial Services for Non-Resident Alien independent contractors (for additional information, see the respective policy located at the following link: http://www.luc.edu/finance/policies.shtml). In determining an individual’s status, HR and DS will consider the following (as taken from IRS Pub 1779):

- **Behavioral Control:** These facts will show whether there is a right to direct or control how a worker does work. (i.e., instructions and training)
  - Instruction: Does the individual receive extensive instructions on how to perform the work required by the engagement. Examples include: How, when or where does the work need to be completed? Who dictates what equipment or tools need to be utilized? Can the individual hire assistants to help perform the work required? How are supplies and other related services purchased?
  - Training: Does Loyola provide training or direction that will guide the individual in how the work is to be performed?

- **Financial Control:** These facts show whether there is a right to direct or control the business part of the work. (i.e., significant investment, expenses, opportunity for profit and loss).
  - Significant Investment: Does the worker have a significant investment in the work being performed?
  - Expenses: Is the worker is not reimbursed for some or all of the business related expenses?
  - Opportunity for Profit or Loss: Does the worker have the prospect of realizing a profit or loss on the engagement?
• **Relationship of the Parties:** These facts will illustrate how the business and worker perceive their relationship. (i.e., contracts and benefits).
  - Employee Benefits: Does the worker receive any benefits such as insurance, pension or paid leave for the engagement in question?
  - Written Contracts: Written contracts can substantiate the intentions of both LUC and the worker in question and will have a great impact in finalizing a worker’s status.

A summary table demonstrating common law factors in classification follows:

<table>
<thead>
<tr>
<th>Factors that show whether a hiring firm has the right to control how a worker performs the specific tasks he or she has been hired to do</th>
<th>Most likely considered an IC if you:</th>
<th>Most Likely considered an employee if you:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do not give him or her instructions on how to perform the work</td>
<td>Provide instructions that the worker must follow about how to work</td>
<td></td>
</tr>
<tr>
<td>Do not provide training</td>
<td>Give the worker detailed training</td>
<td></td>
</tr>
<tr>
<td>Do not evaluate how the worker performs</td>
<td>Evaluate how the worker does the job</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Factors showing whether a hiring firm has the right to control a worker’s financial life</th>
<th>Most likely considered an IC if you:</th>
<th>Most Likely considered an employee if you:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has a significant investment in equipment and facilities</td>
<td>You provide equipment and facilities free of charge</td>
<td></td>
</tr>
<tr>
<td>Pays business or travel expenses him or her self</td>
<td>You reimburse the worker’s business or traveling expenses</td>
<td></td>
</tr>
<tr>
<td>Makes his or her services available to the public</td>
<td>The worker makes no effort to market his or her services to the public</td>
<td></td>
</tr>
<tr>
<td>Is paid by the job</td>
<td>You pay the worker by the hour or other unit of time</td>
<td></td>
</tr>
<tr>
<td>Has an opportunity for profit and loss</td>
<td>The worker has no opportunity for profit or loss – for example, because you pay by the hour and reimburse all expenses.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Factors showing whether you and the worker believe he or she is an IC or Employee</th>
<th>Most likely considered an IC if you:</th>
<th>Most Likely considered an employee if you:</th>
</tr>
</thead>
<tbody>
<tr>
<td>You do not provide employee benefits such as health insurance</td>
<td>You provide employee benefits</td>
<td></td>
</tr>
<tr>
<td>You sign an IC agreement with the worker</td>
<td>You have no written agreement</td>
<td></td>
</tr>
<tr>
<td>The worker performs the services that are not part of your regular business activities</td>
<td>The worker performs services that are part of your core business</td>
<td></td>
</tr>
</tbody>
</table>

**EMPLOYEE:** Based upon the finding of the review, an individual classified as an employee will be set up as such in Human Resources. The employee will track his or her hours in the Kronos Time and Attendance System, receive payments, including proper tax withholdings, through Payroll Services and they will receive a W-2 for their earnings.

Under an employer and employee relationship, the employer must withhold all applicable income tax and the employer’s portion of social security and Medicare taxes. LUC is also required to pay a portion of the Social security, Medicare and unemployment taxes on these wages. Employees are issued W-2, Wage and Tax Statements, detailing all taxes withheld from wages.

Employees may also deduct unreimbursed business related expenses on Schedule A of their income tax return. Under the LUC accountable plan, employees are able to request reimbursement for all travel and business related expenses (see Travel and Business Expense Policy [http://www.luc.edu/finance/policies.shtml]).

**INDEPENDENT CONTRACTOR:** If the individual is deemed to be an Independent Contractor, they will be set up in the Accounts Payable vendor master. Payments will not be made
without a certified FORM W-9 on file. Disbursement Services will not withhold taxes from payments made. All amounts exceeding $600 for a given calendar year will be reported to the IRS as Non-Employee Compensation (Box 7) of Form 1099-MISC.

Independent Contractors are responsible for paying their own income and self-employment taxes and may deduct business related expenses on Schedule C of their income tax return.

VI. QUARTERLY REVIEW AND CERTIFICATION RENEWAL

IMPORTANT: All certification renewals must be completed and approved in advance by Human Resources and Disbursement Services before any new engagement begins. This includes any changes in relationship, agreement or engagement deliverables.

Once an engagement period ends, all individuals that are classified as independent contractors will be required to be reviewed and evaluated for certification renewal. At the time of classification determination and set up in the system, all independent contractors are assigned a “Certification Code” in the tracking system. This “Certification Code” covers the engagement period that was provided on the Workers Classification Review Form. This engagement period will be, but not exceed, one of the following periods:

- Less than one month
- 2 - 3 Months
- 3 - 6 Months
- 6 - 9 Months
- 1 Year

On a quarterly basis, Disbursement Services will audit the independent contractor file. Any contractors that have an expired engagement period will be inactivated in the Vendor Master. No new activity will be allowed for that individual unless a new Workers Classification form is completed for review and approval by Human Resources and Disbursement Services. Upon authorization of a new engagement period, the vendor will be reactivated for new activity.

VII. SOURCES AND IMPORTANT LINKS (subject to change)

Payments Request Decision Tree: TBD
IRS Pub 1586: Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs
IRS Pub 1779: Independent Contractor or Employee
IRS Pub 501: Exemptions, Standard Deduction and Filing Information
IRS FORM SS-8: Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding
IRS FORM 1099-MISC: Miscellaneous Income
IRS FORM W-2: Wage and Tax Statement
IRS FORM W-9: Request for Tax Payer Identification Number and Certification
IRS FORM W-8BEN: Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding
Internal Revenue Service: www.irs.gov
Accounts Payable Online Forms: http://www.luc.edu/finance/forms.shtml
Finance Policies: http://www.luc.edu/finance/policies.shtml
Human Resources Online Forms: http://www.luc.edu/hr/online_forms.shtml
University Policies: http://www.luc.edu/policy/