

Honorarium Payments to Foreign Nationals

Caution

U.S. law significantly restricts what employment foreign nationals may accept. Before committing to an honorarium for a foreign national, departments must ensure the person has the appropriate visa that allows such a payment. For short-term visits made for the purpose of delivering a lecture or speech, only certain visa classifications are authorized to accept an honorarium. An individual already in the U.S. may not necessarily be here in the correct visa classification. For instance, diplomats, employees of foreign governments, military personnel, or others on foreign government representative visas, employees of the World Bank or political officers attached to a foreign embassy in the U.S. hold visa classifications specific to the duties of their posts and are not permitted to earn additional income through activities such as speaking engagements.

Do not assume that an international visitor holds the correct visa classification, especially if he or she is already in the U.S. You must look at additional sources of information that could include the individual's passport visa or stamped I-94 card to determine visa classification.

Visitor for Business B-1 (Business Status)

Foreign Visitors present in the U.S. on a B-1 visa may be paid an honorarium; however, such individuals cannot provide services at the University for more than 9 days and must not accept payment or expenses from more than 5 institutions in the 6-month period of the visa's duration. Other types of payments that a B-1 visa holder may receive while in the U.S. include reimbursement for expenses including accommodations, meals and travel expenses. Payments may be made directly to the provider of the service or to the nonresident visitor (all expenses must have original receipts and are subject to OU Travel Policy restrictions). **NOTE: The 9-day/five institution rule does not apply to those who are only reimbursed for receipted expenses and not receiving honoraria.** "B" immigration holders are not employees.

Visitor for Tourism B-2 (Tourist Status)

Prior to 2006, foreign visitors in the U.S. on a B-2 visa were prohibited from receiving payments of any kind for any reason. Payments made on behalf of B-2 visa holders for such things as lodging or transportation were also prohibited. An easing of these rules came when an IRS general information letter from the Office of the Asst. Chief counsel was published, allowing B-2s *already in the U.S.* to accept an honorarium for a speaking engagement.

Visa Waiver Program; VWB (Visa Waiver Business) or VWT (Visa Waiver Tourist)

Foreign nationals from a participating country in the Visa Waiver Program (VWP) do not have to have a visa to enter the U.S. for business or tourist travel. However, they must have a machine-readable passport valid for six months past their expected stay in the U.S. (unless a country-specific agreement provides an exemption). The foreign national may stay in the U.S. for business or tourist purposes for a maximum of 90 days. No extension of the stay is allowed.

As of September 2010, travelers from a VWP country no longer complete an I-94W. Instead, they must submit their request for a travel authorization to the U.S. through the ESTA Program (Electronic System for Travel Authorization). Travelers complete the ESTA on-line form before entering the U.S. prior to boarding, the carrier will electronically verify with U.S. authorities that the traveler has an approved travel authorization file through ESTA.

Since the ESTA program started, some individuals who have been invited to the US as a B-1 have reportedly been admitted as a B-2 even after showing the B-1 invitation letter. If the individual is in the US

for strictly business activities ie academic activities but their immigration stamp is B-2 then in this situation we can reconsider making payments such as honoraria and travel to a B-2 by using the B-1 rules since we have considered both the visa type and the purpose for the trip.

For more information on which countries are in the program, see the Department of State web site about the Visa Waiver Program.

http://travel.state.gov/visa/temp/without/without_1990.html#countries

What Activities Can Be Paid Through an Honorarium

An honorarium may be paid to a foreign national for "usual academic activity or activities." These activities include lecturing, teaching and sharing of knowledge or performance.

Honorarium Rule ("9/5/6" Rule)

Foreign nationals in B-1, B-2, VWB, and VWT status may accept an honorarium and/or reimbursement of travel expenses under the following conditions:

- For "usual academic activity or activities"
- Nine (9) days or less at OU
- The individual has accepted such payment from no more than 5 educational or research institutions (including OU) in the previous 6-month period.

If the individual does not meet the honorarium rule, then they cannot be paid for the honorarium. Foreign nationals holding a B-1/VWB or B-2/VWT visa who exceed the honorarium rule are not prohibited from giving an invited lecture at OU. They just can't be paid an honorarium. There is nothing that says an honorarium has to be offered.

Example

B-1 Visa

Dr. Carson from Australia has been paid an honorarium for lectures at five U.S. universities in the past three months. He has now been invited to OU to give a talk by Zinzendorf School of Doctoral Studies. He's traveling in the U.S. on a B-1 visa. Dr. Yang cannot be paid an honorarium for the talk but can be reimbursed for reasonable travel and/or incidental expenses. Request for travel reimbursement with documentation should be sent to the Business Office.

B-2 Visa

Ms. Yang from Hong Kong has been paid an honorarium for a musical performance at five U.S. universities in the past four months. She's now vacationing in San Francisco on a B-2 tourist visa. The Jubilee College of Music wants to pay her to give a musical performance. Unfortunately, because she has exceeded the Honorarium Rule and is traveling on a tourist visa, she cannot be paid either an honorarium or be reimbursed for travel expenses.

Who is Eligible to Receive an Honorarium

- **B-1 (Business Status) or B-2 (Tourist Status)** provided the individual meets the conditions of the Honorarium Rule.

- **VWB (Visa Waiver Business) or VWT (Visa Waiver Tourist)** provided the individual meets the conditions of the Honorarium Rule.

Withholding

Many countries have treaties with the U.S. that allow their citizens to claim exemption from federal withholding on payments made to them by U.S. institutions. If treaty benefits apply and all the paperwork is in order, honorarium payments will not be withheld. If there is no treaty or if the paperwork is not in order, OU will withhold 30% of the honorarium payment and it will be necessary for your guest speaker to file a U.S. tax return at the end of the year to reclaim the amount withheld. For example, if the honorarium is \$500 and there is no treaty or inadequate paperwork, the guest speaker will receive a check for \$350 and the rest will go to the IRS. *If payments to individuals exceed \$1,500 within the calendar year, 7% California withholding tax will be deducted from the payment.*

Travel reimbursement is not subject to withholding because it is not considered income.

Letter of Invitation

A letter of invitation must be sent to every foreign national invited to OU who will receive an honorarium or reimbursement for travel expenses. The letter should come from the department/college that is sponsoring the activity. The letter should contain the following information:

- Name of the event or activity
- Date and location of the event
- The amount of any honorarium that will be paid if any
- Whether travel and/or incidental expenses will be reimbursed
- Contact information at the sponsoring department/college for further information

Reimbursement by B Visa Type When Honorarium Rule is Not Exceeded		
B Visa Type	Pay honorarium?	Reimburse travel and/or incidental expenses?
B-1/VWB	Yes	Yes
B-2/VWT	Yes	No

Reimbursement by B Visa Type When Honorarium Rule is Exceeded		
B Visa Type	Pay honorarium?	Reimburse travel and/or incidental expenses?
B-1/VWB	No	Yes
B-2/VWT	No	No

Have the visitor complete the following documents:

- Certification of Academic Activity
- Foreign National Information Form
- Foreign Visitors Honoraria Eligibility Certification

Submit all forms to the Business Office.