

# **Financial Services Manual (FIN)**

## **FIN 425–02: Immigration Status—Eligibility to Receive Payment**

Effective: 5/1/1996

Revised: 7/1/2023

### **Purpose**

To describe the policy for authorizing payments to nonresident aliens at ASU

### **Sources**

U.S. Citizenship and Immigration Services

University policy

### **Background**

This policy is dependent on immigration status as shown on the I-94 card issued by U.S. Citizenship and Immigration Services (USCIS) when a foreign visitor enters the country.

### **USCIS Documentation for J1 or F1 Visa Categories**

Nonresident aliens may enter the U.S. under an F1 or J1 immigration category by obtaining from an educational institution (or other institution) certain documents. These documents are used by the nonresident alien to acquire a visa from the U.S. Consulate prior to departing the nonresident alien's home country. These preliminary documents are forms generated by the Student and Exchange Visitor Information System (SEVIS):

1. SEVIS Form I-20, Certificate for Eligibility for Nonimmigrant (F1) Student Status

or

2. SEVIS Form DS-2019 (formerly Form IAP-66), USIA Exchange Visitor Facilitative Staff Certificate of Eligibility for Exchange Visitor (J1) status.

Once the nonresident alien has obtained a visa, he or she may then proceed to enter the United States. Upon the individual's arrival at a USCIS entry point, USCIS processes the I-20 or DS-2019 and issues to the nonresident alien an I-94 Form. This form will indicate the immigration status that the individual has during his or her stay in the United States.

A copy of the I-94 card is one piece of documentation required before ASU can make a payment to a foreign visitor. The I-94 is surrendered when leaving the country, so a copy must be obtained while the visitor is at ASU.

### **USCIS Documentation for Other Visa Categories**

Nonresident aliens may enter the U.S. under other visa categories. The most common categories are referred to as B1 for business, B2 for tourist, TN1 for Canadian NAFTA business visa, TN2 for Mexican NAFTA business visa, or TD for either Canadian or Mexican NAFTA dependent.

Residents of Canada and Mexico may enter the U.S. without a visa or an I-94 card. In order to prove B-1 status for purposes of receiving an honorarium, such visitors should request an I-94 card stamped B-1 when entering the country. The request should be made on the basis of a letter of invitation from ASU to lecture or participate in a conference or other usual academic activity. Residents of Mexico may have a Mexican border-crossing card (BCC) or a multiple-entry nonimmigrant visa.

The Visa Waiver Program (VWP) allows foreign nationals from certain countries to be admitted to the U.S. under limited conditions and for a limited time without obtaining a visa. The following countries are currently in the program: Andorra, Austria, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. Nonresident aliens from these countries may enter the United States without a visa for up to 90 days. An I-94W card is issued to the nonresident alien indicating the visa category applicable to the person's entry into the United States. Typically, the I-94 indicates a WB or WT status.

## Eligibility to Receive Payment

Immigration and taxation regulations require that only persons in certain immigration status are eligible to receive payments from the university. USCIS may assess significant penalties if improper, unauthorized payments are made to nonresident aliens. Payments to individuals in an immigration status that does not have work authorization may result in a "loss of status" condition leading to immediate deportation and/or sanctions against future entry into the U.S.

U.S. immigration law allows only the following types of payments to nonresident aliens for each of the following visa categories:

Visa Type, Description, and Allowable Payments		
Visa Type	Description	Type of Payments Allowed
B1	Visitor for business	B1 status is not a work authorization status, although there is a limited exception for foreign visitors to colleges and universities. Under this statutory exception, B1 and B2 visa holders may be paid honoraria and/or reimbursed for travel expenses if (a) the visitor is engaged in usual academic activities, (b) the activity lasts nine days or less, and (c) the visitor has not been paid or reimbursed by more than five other U.S. institutions or organizations during the past six months. This is known as the 9/5/6 rule. Departments wishing to make payments based on this exception must complete the form " <a href="#">Compliance Statement for Payments to Visitors in Business or Tourist Status</a> ." Honoraria to B1 status visitors is limited to the nine days of activity. Reimbursement to B1 status visitors may be made for travel expenses over the duration of the legal stay.
B2	Visitor for tourism	No honoraria unless the 9/5/6 exception applies. Reimbursement for travel expenses cannot exceed the nine days of approved activity.
H-1B	Temporary workers in a specialty occupation	Restricted employment status where the nonresident is authorized to work only for the sponsor or petitioner institution. This means ASU can only pay H-1B visitors that it sponsors. ASU can pay the sponsor institution of an H-1B visitor for services provided.
TN1	Treaty NAFTA (Canada)	Same as H-1B

TN2	Treaty NAFTA (Mexico)	Same as H-1B
TD	Treaty dependent	Payments of any kind are disallowed
WB	Visa waiver —business	Same as B1
WT	Visa waiver —tourist	Same as B2
J1	Nonstudent professor and researchers	ASU-sponsored J-1 nonstudents may be employed on campus. Off-campus employment is very restrictive and approval must be obtained through the International Programs Office. Scholarship, fellowship, and noncompensatory stipends are allowed. Payments to nonstudent J-1s not sponsored by ASU must have permission of sponsoring organization.
J1 and F1	Students	ASU-sponsored students may be employed on campus. Off-campus work requires authorization. Must check with International Students Office (or Office of International Programs for exchange students) to determine eligibility. Scholarships, fellowships, and noncompensatory stipends are allowed.
J2 and F2	Dependents of J1 and F1	J2 can obtain employment authorization directly from USCIS, and in such cases will be issued a work authorization card.

Factors that determine whether an individual is a nonresident for income tax purposes differ significantly from residence status for immigration purposes. The Internal Revenue Service (IRS) uses a substantial presence test to determine whether an individual is a resident or nonresident alien for income tax purposes. The substantial presence test is explained more fully in [FIN 425-04](#), “Nonresident Independent Contractors and Other Foreign Entities.”

## Policy

The university will make payments to nonresident aliens only if they are in an appropriate immigration status as described above.

All nonresident alien students on campus must obtain the necessary documents to enter the country from the designated person in Undergraduate Admissions or in Graduate Admissions. After the admissions process, the International Student Office will be the liaison between ASU and the nonresident alien student and assist the student in maintaining his or her immigration status and work authorization.

Nonresident aliens on campus under the Department of State Exchange Visitors Program should contact the International Programs Office to prepare the appropriate USCIS documents to ensure that all visiting professors and participants in university-sponsored events who are expecting payments from the university have an immigration status that will permit such payments.

ASU departments can establish the B1 visa status for visitors from Mexico and Canada by providing a letter of invitation addressed to their home country address. Such a letter, dated prior to entry into the U.S., will substantiate the business intent for the visit.

## **Procedures**

### **Payments to Students**

For payments to students, Payables and Reimbursements will review each student's immigration status on-line through the university registrar's database. Payments to nonresident aliens will be referred to the ASU tax compliance unit for review and approval. See [FIN 425-05](#), "Student Financial Support Payments to Nonresidents," for more information on required documentation.

### **Other Payments**

For other payments, Payables and Reimbursements will identify nonresident aliens by review of the Request for Taxpayer Identification & Certification form completed by the payee (see [FIN 421-01](#), "Guest Lecturers, Consultants, and Other Independent Contractors"). Payments to nonresident aliens are forwarded to the ASU tax compliance unit for review. The tax compliance unit reviews documents such as the I-20, DS-2019, and the I-94 to determine eligibility for payment. See [FIN 425-04](#), "Nonresident Independent Contractors and Other Foreign Entities," for a complete discussion of documents required for payment to a nonresident alien.

### **Additional Information**

For additional guidelines on nonresident alien tax issues see the [ASU Foreign Visitor Tax Guide](#).

### **Cross-Reference**

For more information on making payments to short-term foreign visitors, see [FIN 425-04](#), "Nonresident Independent Contractors and Other Foreign Entities."