FAS Independent Contractor (IC) FAQs

Updated July 23, 2021

Big Picture Questions

Q1: Where can I find complete information about the FAS Independent Contractor (IC) policy?
FAS follows the University-wide IC policy. FAS-specific information is available on the FAS HR website.

Q2: What makes an IC?
Under Massachusetts law, an individual worker performing services must be hired as an employee unless all three parts of the following test are met:

- **Prong #1:** The worker must be free from Harvard’s control and direction in connection with the performance of the service, both under a contract for the performance of the service and in fact.

- **Prong #2:** The service performed by the worker must be outside the usual course of Harvard’s business. (Notes about prong 2: Massachusetts law is one of the strictest in the country. This is especially frustrating if an IC requestor has previously worked in another state and is familiar with a different standard.)

- **Prong #3:** The worker must be customarily engaged in an independently established trade, occupation, profession, or business of the same type as the service being performed for Harvard.

If the engagement with the worker meets this three-part test, the worker can be classified as an independent contractor. Otherwise, the worker must be hired as an employee.

Q3: I’ve had an IC approved in the past. Doesn’t that mean the IC will always be approved in the future?
No. IC determinations are made per engagement, not by person. Just because a person has received an IC designation in the past does not mean that future engagements by the same person will yield the same outcome. For example, the more times you engage an IC, the more it may start to look like an employment relationship (part of Harvard’s “usual course of business”) and will come under closer scrutiny.

Q4: It seems like it used to be easier to hire an IC at Harvard. What changed?
Harvard updated its IC policy in July 2019 to clarify the Massachusetts law requirements. With the updated policy, units can no longer pay IC invoices without prior IC approval. This was a change for some units, who had not historically submitted IC request paperwork to HR for review/approval. The tightening of the IC policy and related financial controls led to an increase in FAS IC requests. Sometimes we will hear from a faculty member that they were able to easily hire an IC at another Harvard school. This was likely prior to the updated policy in July 2019, which applies to all Harvard schools/units.
Research Questions

Q5: Can an IC be hired to conduct research?
No. Research is part of Harvard’s core/ongoing business operations and is integrated into our mission (teaching and research). This means it does not pass prong #2 of the IC test. An IC cannot be hired to conduct research.

Q6: Can an IC be hired for specialized tasks in support of research?
It depends. Although in general research work is core and not work that can be done by an IC, there could be specific tasks within a research project that could be legitimately contracted out. For example, if a research team is collecting and analyzing data, they might need a special software application to handle the data. It is possible that the task of developing the software could be handled by an IC on a contract basis. All three prongs of the IC test would still need to be met. Each IC request is unique and requires a comprehensive review.

Q7: Can an IC be hired to collect primary-source data/materials used in support of research?
It depends. If the data collection project is very limited and discrete and isn’t part of the ongoing research project, it is possible that an IC could be engaged to perform the task. All three prongs of the IC test would still need to be met. Each IC request is unique and requires a comprehensive review. Please also note that for any proposed international engagement, Harvard Global Support Services must be consulted.

Forms and Processing Time

Q8: Does the Exception Attestation Form exempt the IC engagement from the IC policy?
A: No. The Exception Attestation Form exempts you from filling out the longer ICQ and submitting it to FAS HR for review and determination; it does not exempt you from the IC policy itself. By using the Exception Attestation Form, you are confirming that you understand the IC policy, are following the IC policy, and that the work engagement follows the exception criteria.

Q9: Do I need to submit the Exception Attestation Form to FAS HR for record keeping?
A: No. The Exception Attestation form is kept at the unit level. Should there ever be an audit, the department would provide the needed paperwork.

Q10: I’m unsure if my proposed IC engagement qualifies to use the Exception Attestation Form. What do I do?
A: Discuss the details of the engagement with your FAS HR Consultant to see if the use of the Exception Attestation Form is appropriate. If you have an additional question, send it to ic-request@fas.harvard.edu. We will help to answer it.

Q11: Can I use the Exception Attestation Form for the same independent contractor for multiple engagements?
A: It depends. You can use the Exception Attestation Form once per IC engagement, per 12 months. If your unit renews, extends, or enters into a subsequent engagement with the IC within a 12-month period, then then a completed ICQ and review/determination by HR is required.

Q12: Can the Exception Attestation Form be used for international engagements?
A: No. The Exception Attestation Form cannot be used for international engagements.

Q13: My department would like to pay an honorarium, but it is for someone in an advisory capacity (not a speaking fee). Can I use the Exception Attestation Form?
A: An honorarium is not considered to be a payment for services. It is a small, token payment offered as a gesture of thanks. In such cases, there is no need for the ICQ or the Exception Attestation Form because there is no contract for services with an individual. If there is a contract (agreement) for services in exchange for payment, then the payment is not an honorarium and either the ICQ or the Exception Attestation Form must be completed.

Q14: How long does an IC determination take?
A: Our standard processing time is 10 business days. Straightforward requests are often processed in less than 10 business days. Complicated requests, incomplete requests, requests with a lot of back and forth, and international requests often take longer than 10 business days. If the request requires multiple requests for more/clarifying information, that naturally takes longer. All international requests are consulted on with Harvard Global Support Services. This is a necessary step to follow international law, and adds time to the process as well. An IC request can take many weeks depending on the circumstances.