

**California State University, Hayward**  
**Employing Nonresident Aliens**

**PURPOSE**

In order to comply with Federal and State rules and regulations, including the Internal Revenue Code, California Revenue and Taxation Code, and California State University policies, each CSUH department must follow these procedures when employing Nonresident Aliens. The following procedures are intended to assist campus departments when employing Nonresident Alien faculty, graduate teaching associates, graduate assistants, special consultants, staff, and students. The procedures for Nonresident Aliens are in addition to all current hiring and payment procedures required by Human Resources, Payroll, and Academic Affairs.

Determination of an employee's tax residency is necessary prior to receiving any type of payment from Cal State Hayward. This includes a requirement that the employee logs on to the online Glacier Nonresident Alien Tax Compliance database (Glacier), completes the required information, and provides the requested documents to the NRA Tax Administrator.

**HIRING PROCEDURES**

**Center for International Education (CIE) & American Language Program (ALP)**

- A. CIE will provide Employment Eligibility Letters for those Nonresident Aliens with F Visa status enrolled in degree programs that are eligible to work (see Attachment A).
- B. ALP will provide Employment Eligibility Letters for those Nonresident Aliens with F Visa status are eligible to work (see Attachment B).

**Department**

- A. The department provides NRA with the following forms, outlining requirements for them to bring documentation to Payroll (and Human Resources for staff):
  - 1. Intermittent Employee Information Sheet
  - 2. New Employee Sign-In Procedures
- B. The department will advise all Student employees that if they are considered Nonresident Aliens for employment purposes, they must obtain an Employment Eligibility Letter from the Center for International Education (CIE), the American Language Program (ALP), or the J-1 program sponsor.
- C. Departments may not allow Nonresident Aliens to work until:
  - 1. The department receives a copy of the Intermittent Employee Information Sheet signed by the Payroll Office
  - 2. Student employees provide a copy of the Employment Eligibility Letter from CIE or ALP
- D. The department will advise all employees that before they can work, they must complete the sign-in process in the Payroll Office.

## Payroll

- A. If the I-9 Employment Eligibility Verification form indicates that the employee is a U.S. Citizen (including residents of Guam or Puerto Rico) or Permanent Resident Alien, the Payroll Office will follow normal CSUH and CSU policies and procedures.
- B. If the I-9 Employment Eligibility Verification form indicates that the employee is an “Alien authorized to work until [a specific date]”, the employee must provide the following documents, which will be photocopied and imaged in the Payroll Office:
  - 1. Passport, showing picture, name, and number
  - 2. U.S. Visa Sticker/Stamp (in passport) , if available
  - 3. I-20 (F-1 Visa holders) or IAP-66/DS2019 (J-1 Visa holders) – these may be approved by Admissions, American Language Program (ALP), or CIE, or an external sponsoring organization (J-1s).
  - 4. I-94/I-94W - Arrival and Departure Record (small white card inside the passport)
  - 5. Social Security Card – All newly hired employees must already have in their possession a Social Security Number
  - 6. Employment Eligibility Letter confirming that the employee is eligible to work under their current immigration status
- C. By signing the I-9, employees attest to the truthfulness of information provided “under penalty of perjury” and subject to “imprisonment and/or fines.”
- D. If the employee is a Nonresident Alien, the Payroll Office will provide the employee with a CSUH NRA Individual Record Form to be completed as follows:
  - 1. Last name
  - 2. First name
  - 3. Middle name
  - 4. csuhayward.edu email address (horizon.csuhayward.edu for students)
  - 5. Social Security Number
  - 6. CSUH Net ID (CSUH’s Alternate ID)
  - 7. Phone Number
  - 8. Faculty/Staff, Student, or Vendor
  - 9. Department Name and Phone Number
- E. The Payroll Office will instruct the employee to take the completed NRA Individual Record Form to the NRA Tax Administrator.
- F. The employee will retain the entire packet of hiring documents, until they complete the Glacier requirements and receive approval from the NRA Tax Administrator.
- G. Employees should not leave unsigned or incomplete documents for the NRA Tax Administrator’s review, since the appointment process and the approval to begin working cannot be finalized until all documentation is complete and fully executed.
- H. Note that the Employee Action Request (EAR) or Student Payroll Action Request (SPAR) are not authorized by the Payroll Office until the tax residency, availability of tax treaty benefits, and/or correct withholding allowances have been determined.
- I. Students in Nonresident Alien Tax Status

1. The Chancellor's Office has created the "Student – Nonresident Alien Tax Status" (code 1868) classification for student assistants (HR Technical Letter HR/2004-02, dated March 4, 2004)
  2. Nonresident Alien Students will complete the Student Payroll Action Request (SPAR) form
- J. FICA Tax Withholding Requirements:
1. FICA is not exempt under U.S. tax treaties; however, many NRA students are excluded from FICA
  2. IRC §3121(b)(19) excludes F, J, M, or Q visa holders who have not passed Substantial Presence Test (SPT)
  3. IRC §3121(b)(10) provides certain exclusions to qualified students
  4. Nonresident Alien employees may qualify for exemption under a Totalization Agreement
  5. Most H1-B visa holders (e.g., tenure track faculty) will be subject to FICA
- K. NRA State Withholding Requirements:
1. California does not recognize any Federal tax treaty exemptions; therefore, wages are subject to California withholding
  2. California income tax called Personal Income Tax (PIT) is to be withheld once the employee is paid over \$100 in wages in a calendar quarter.
  3. The employee must request an appropriate State tax withholding rate on the EAR or SPAR, Box E. II. (Special Treatment of State Allowances).
  4. If the NRA employee does not request Special Treatment of State Allowances, withholding will revert to Single, with one withholding allowance

### **NRA Tax Administrator**

- A. The Payroll Office will direct the employee to the NRA Tax Administrator for further employment processing.
- B. The NRA Tax Administrator will review the NRA Individual Record Form from the employee and:
  1. Enter the information in Glacier
  2. Individual record, logon id and password will be automatically created in Glacier
  3. Email notification will be sent from Glacier to the employee to log on and complete the required information
  4. Subsequent automated email notification will be sent to employees that have not completed the required online information
  5. If possible, the NRA Tax Administrator will provide the logon id and password at the employee's initial visit
- C. The employee will be notified via email to log on to Glacier, complete the information online, and bring the necessary forms and documents created through Glacier to the NRA Tax Administrator as required:
  1. NRA Individual Record Form
  2. Glacier Tax Summary Report
  3. Form W-4 Employee's Withholding Allowance Certificate

4. Form W-8BEN Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding
  5. Form 8233 Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien
  6. Treaty Attachment
  7. Employee Action Request (EAR) or Student Payroll Action Request (SPAR)
  8. I-94/I-94W - Arrival and Departure Record (small white card inside the passport)
  9. I-20 (F-1 Visa holders) or DS2019 (J-1 Visa holders) – these may be approved by Admissions, American Language Program (ALP), CIE, or external organizations with federal funding
  10. U.S. Visa Sticker/Stamp (in passport), if available
  11. Form I-797 Notice of Action (For scholars in H-1B status, this serves as an approval notice for H-1B classification and indicates the dates of approved employment for the sponsoring employer)
- D. The employee may make an appointment with the NRA Tax Administrator to ensure documents are complete.
- E. The NRA Tax Administrator will review the Glacier Tax Summary and other documentation provided by the employee to confirm whether some or all of the wages of the employee are exempt from income and FICA tax withholding under a Federal income tax treaty.
- F. If a Federal tax treaty exemption is available, the NRA Tax Administrator will:
1. Obtain the appropriate approval on the Form 8233 and treaty attachment
  2. Provide a copy to the employee
  3. File a copy with the Internal Revenue Service
  4. Retain the original
- G. Note that if a Federal tax treaty exemption is available, it is the employee's decision whether to take advantage of a Federal tax treaty; it is not mandatory. If the employee decides to take advantage of a tax treaty benefit available, they must sign Form 8233 and treaty attachment.
- H. EAR/SPAR Forms
1. Faculty and Staff employees will complete an Employee Action Request (EAR)
  2. Student employees will complete a Student Payroll Action Request (SPAR)
- I. The NRA Tax Administrator will have the employee complete two (2) EAR/SPAR forms to ensure that the proper Federal and State taxes are withheld both during the time period that they are eligible for tax treaty exemption and after tax treaty benefit limits have been reached
1. Nonresident Aliens that are eligible to receive tax treaty benefits will complete the first EAR/SPAR form as follows, which will be in effect until the tax treaty benefit limits are reached:
    - a. Single
    - b. 95 withholding allowances (effectively exempt)
    - c. The State tax withholding rate must be completed to Single, with 1 withholding allowance, or the employee may request an appropriate

- State tax withholding rate (if none indicated, State withholding will revert to Single, 1)
- d. The NRA Tax Administrator will initial the form approving the withholding status, which the employee will take to the Payroll Office with other hiring documents
2. A second EAR/SPAR form that will become effective when the tax treaty benefit limits are reached will be completed as follows:
    - a. Single
    - b. 1 withholding allowance (may be more than one for certain countries)
    - c. \$33.10 additional withholding
    - d. The State tax withholding rate will revert to Single, with 1 withholding allowances, or the employee may request an appropriate State tax withholding rate
    - e. The following statement will be added to the second EAR form: “I understand that the withholding allowances indicated will become effective when my tax treaty benefit limits are reached”
    - f. The NRA Tax Administrator will initial the form approving the withholding status and retain until the employee is no longer eligible to receive tax treaty benefits or tax treaty benefit limits have been reached
  3. Nonresident Aliens that are not eligible to receive tax treaty benefits will complete an EAR/SPAR as follows:
    - a. Single
    - b. 1 withholding allowance (may be more than one for certain countries)
    - c. \$33.10 additional withholding
    - d. The State tax withholding rate will revert to Single, with 1 withholding allowance, or the employee may request an appropriate State tax withholding rate
    - e. The NRA Tax Administrator will initial the form approving the withholding status, which the employee will take to the Payroll Office with other hiring documents
- J. The NRA Tax Administrator will maintain the following documents for the employee’s tax file:
1. NRA Individual Record Form
  2. Glacier Tax Summary Report
  3. Form W-4
  4. Form W-8BEN
  5. Form 8233
  6. Treaty Attachment
  7. Copy of Employee Action Request (EAR) or Student Payroll Action Request (SPAR)
  8. Copy of I-94/I-94W
  9. Copy of I-20 (F-1 Visa holders) or /DS2019 (J-1 Visa holders)
  10. Copy of Visa Sticker/Stamp, if available
  11. Form I-797

12. Copy of I-9
  13. Original "second" EAR/SPAR form, which will be sent to the Payroll Office when tax treaty benefit limits have been reached (a copy will be retained in the employee's tax file)
- K. The NRA Tax Administrator will initial the EAR/SPAR form and direct the employee to take the following documentation to the Payroll Office to allow the Payroll Office to begin the appointing process:
1. Original Employee Action Request (EAR) or Student Payroll Action Request (SPAR)
  2. Form I-9
  3. Social Security Card
  4. Employment Eligibility Letter
  5. Intermittent Employee Information Sheet (Faculty/Staff)
  6. Student Employment Agreement (Students)
  7. Passport
  8. Copy of Visa Sticker/Stamp
  9. Copy of I-20 (F-1 Visa holders) or DS2019 (J-1 Visa holders)
  10. Copy of I-94/I-94W

#### **MONITORING TREATY BENEFITS**

Year-to-date wages for treaty benefit recipients must be continuously monitored so that treaty benefit amounts are not exceeded.

- A. Periodic updates are sent from Glacier to the NRA Tax Administrator, advising of any status changes or thresholds that may affect an employee's tax residency or the availability of tax treaty benefits
- B. Periodic reports will be generated of Nonresident Alien employees receiving payments through Payroll that will be compared to Glacier database in order to ensure that the employees' statuses in the Payroll system agree with Glacier
- C. Employees must notify Payroll, CIE, and the NRA Tax Administrator and provide updated documents if their status changes - Visa status changes may be due to:
  1. Passage of time (Visa expires)
  2. Number of credits falls below minimum required
  3. Last day of classes/exams is the last day of eligible employment

#### **ANNUAL INCOME TAX TREATY REVIEW**

Treaty exemptions must be renewed annually, prior to the beginning of the next calendar year.

- A. A new Form 8233 and treaty attachment must be completed each calendar year by every employee who is eligible to continue receiving treaty benefits
- B. The NRA Tax Administrator will inform the Payroll Office of treaty benefit renewals, treaty expirations, or changes in residency status

## **FORM 1042-S PROCESSING**

The State Controller's Office and the CSU Chancellor's Office require that campuses retain Form 1042-S filing responsibility (see SCO Letter # 02-011, dated March 8, 2002).

- A. Form 1042-S used to report tax treaty benefit wages only
- B. Federal wages in excess of tax treaty maximum is reported on Form W-2, and include applicable withholding
- C. All wages for employees not eligible for tax treaty benefits must be reported on Form W-2, not 1042-S
- D. For California reporting, all wages are included on Form W-2, box 16 (state wages), no treaty exemptions are recognized
- E. The NRA Tax Administrator will provide wages needing to be adjusted to the Payroll Office. The Payroll Office will prepare appropriate paperwork for submission to the State Controllers Office to exclude treaty benefit wages in Box 1 on Form W-2 (reference Tech Letter 02-011)
- F. For employees working for both the University and a campus auxiliary, the employee is allowed an exemption only for wages earned from the University – wages for the other entities will be subject to the restricted withholding rate

The above procedures are required to employ Nonresident Alien faculty, graduate teaching associates, graduate assistants, special consultants, staff, and students. The procedures do not fully describe the entire process, but provide an outline of the necessary steps that departments need to adhere to. Departments may receive further clarification on the above procedures or additional information regarding employing Nonresident Aliens by contacting the NRA Tax Administrator at 510-885-2831.

## Attachment A – Employment Eligibility Letter CIE

TO: All University Offices

Date: *date*

From: \_\_\_\_\_ (*signature*)  
Miguel Silva  
International Student Advisor

Subject: On-Campus Employment of Foreign Student

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Name: \_\_\_\_\_ Student ID: \_\_\_\_\_

This will certify that the above named has been approved by this office to accept or continue employment on-campus. The conditions of this approval are as follows:

1. During an academic quarter the student may work a maximum of 20 hours per week.
2. During the student's annual vacation quarter and official university breaks, the authorization allows full-time employment of 40 hours/week. Vacation quarters are determined by the student's enrollment history and immigration status. CIE can confirm when a student is eligible for a vacation quarter and would be allowed to work full-time.
3. The student is subject to all other regulations of the University governing student employment.
4. Eligibility to continue on-campus employment is dependent upon the maintenance of the student F-1 status, as determined by USCIS. CIE can confirm if the student is maintaining his/her F-1 status.
5. On-campus employment eligibility terminates once a student completes his/her degree program, unless the student can present other employment authorization that meets the I-9 requirements.

### Student Certification of Understanding

I certify that I understand and agree to comply with the above guidelines regarding the employment of an international student holding F-1 nonimmigrant status.

\_\_\_\_\_  
Student Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## Attachment B – Employment Eligibility Letter ALP

TO: All University Offices

Date: *date*

From: \_\_\_\_\_ (*signature*)  
Jennet Jones, DSO/Registrar  
American Language Program

Subject: On-Campus Employment of International Student

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Name: \_\_\_\_\_ Student ID: \_\_\_\_\_

This will certify that the above named has been approved by this office to accept or continue employment on-campus. The conditions of this approval are as follows:

1. During an academic quarter the student may work a maximum of 20 hours per week.
2. During the student's annual vacation quarter and official university breaks, the authorization allows full-time employment of 40 hours/week. Vacation quarters are determined by the student's enrollment history and immigration status. ALP can confirm when a student is eligible for a vacation quarter and would be allowed to work full-time.
3. The student is subject to all other regulations of the University governing student employment.
4. This authorization **expires on *date***, or if offered employment, when the current position is terminated, whichever is earlier.

### Student Certification of Understanding

I certify that I understand and agree to comply with the above guidelines regarding the employment of an international student holding F-1 nonimmigrant status.

\_\_\_\_\_  
Student Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date