



Classification of Employee Fellow vs Nonemployee Fellow

Welcome

Introductions:

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Background

Objectives

After completing this information session, you should be able to:

- Be familiar with the draft employee vs nonemployee fellow classification guidance
- Seek clarification of the current draft regarding from subject matter experts
- Know how to leverage various resources

History

- Work on this project started in 2017 but was delayed due to various contractual negotiations and COVID shutdowns.
- Confusion around the differences of appointment types.
- What a person is called does not necessarily accurately describe how they should be paid. Individuals could be working next to each other, but may be paid differently based on their duties, deliverables, and funding source.
- An individual, PI or department's preferences for how to pay an individual is not relevant to the classification determination.
- [December 2022 - released Guidance on Classification of Employee Fellow vs Nonemployee Fellow](#) with a comment period through 5/31/23. Send comments and feedback to financialpolicy@harvard.edu.

Questions and Concerns

- Titles
- How to set them up
- Moving between projects
- What does primarily for Harvard or a sponsor's benefit mean?
- Overlap between Harvard benefitting from the work and the individual.
- Restrictions based on funding source
- Managing payments from multiple funding sources

Purpose of Guidance

Harvard calls individuals generally performing research, a variety of titles such as fellow, postdoc, scholar, trainee, grantee, stipendee, awardee, etc. (referred to as fellows for the purposes of this training). These terms may also apply to Harvard students.

To comply with federal and state regulations, the Harvard department is required to classify the fellow based on the objective, specific facts and circumstances of the fellow's position and responsibilities.

- Regardless of title, it is important that these individuals be correctly classified either as:
 - Harvard employees (receiving payments of employee compensation from Harvard) or
 - nonemployees (receiving nonemployee fellowship payments from Harvard).

Preferences for how to pay an individual or job title is not relevant to the classification determination.

A misclassification may result in adverse tax or other consequences to Harvard or the individual.

Employee Fellow vs Nonemployee Fellow

Employee vs. Nonemployee Fellowship Payments

Employee Fellowship

Employee fellowship payments are made in exchange for **services that are primarily for Harvard's benefit.**

Employee fellowship payments represent compensation (i.e., salary or wages) and generally include payments that:

- Relate to activities that are subject to Harvard's control, meaning a Harvard representative (e.g., Faculty member) tells the individual where, when, and how to do the work, OR
- Subsidize studies or research primarily for the benefit of Harvard, OR
- Relates to research where the research topic is determined by Harvard or the sponsor, OR
- Represent payments for teaching.
- Includes payments for research services performed under most federal agency research grants.

Nonemployee Fellowship

Generally, **nonemployee fellowship** payments meet ALL of the following conditions:

- The primary purpose is to aid the fellow's pursuit of study or research.
- The payment is an award with few strings attached, i.e., no requirement on the fellow's part to perform substantial services or a specific set of tasks for the sponsor or the University.
- A requirement that the fellow provide evidence of effort – such as through limited oral or written progress reports -is NOT considered substantial services.
- The research topic is determined by the fellow, not assigned by the sponsor or Harvard (although faculty may advise).
- While the University or sponsor may receive some benefit from a recipient's work product (for example, certain intellectual property rights), they are not the primary beneficiary of the work, and the work does not primarily support a faculty member's project or research program.

Primarily Harvard's Benefit

Some relevant Factors for determining if work would be primarily for Harvard or a sponsor's benefit for work/services that is more than de minimis or insignificant **and** would include one or more of the following:

1. services are for a grant that has a deliverable to the sponsor;
2. individual is performing a function that directly enhances the program or activities of Harvard or the sponsor;
3. individual is participating in an activity that generates income to Harvard or the sponsor;
4. primary purpose of the work is for Harvard to obtain useful results from the individual's research;
5. Harvard or the PI determines the research activities.

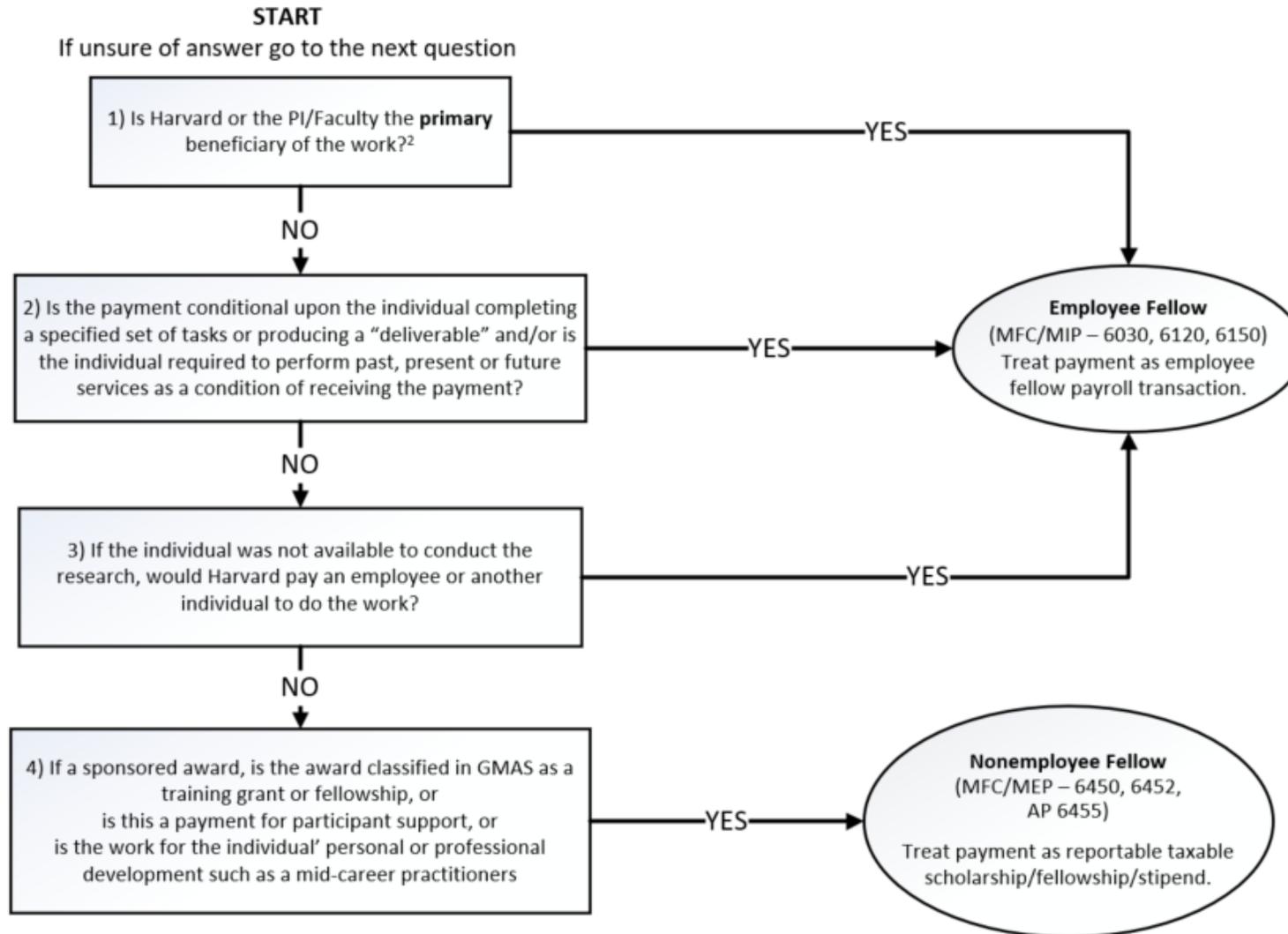
Indicators May Fall into A Certain Category

Since positions may not squarely fit one classification or the other, the department should consider the nature of the position and the fellow's responsibilities, and determine which classification is the closer fit.

Factors suggesting an employee fellow payment	Factors suggesting a <u>non</u> employee fellow payment
<ul style="list-style-type: none">• Pay is based on percentage of effort.• Payment is tied to completion of one or more deliverables.• Harvard can immediately stop payments if the fellow interrupts the work.• The relationship between faculty member and fellow is more supervisor/worker than mentor/mentee.• The faculty member closely supervises the work.• The fellow is doing work previously done by an employee or is acting as a replacement or substitute for an employee fellow, such as a research assistant/associate.• The faculty member or sponsor identified the research topic.	<ul style="list-style-type: none">• Payment is typically based on a flat amount.• Payment is for housing or other living expenses such as food, accommodation or health insurance.• Harvard cannot immediately stop payments if the fellow interrupts the work.• The relationship between faculty member and fellow is more mentor/mentee than supervisor/worker.• The faculty member provides general supervision over the work.• The fellow identified the research topic (perhaps with advice from the faculty member).• The fellow applied for and obtained the funds from an outside sponsor (even if the sponsor required the funds to flow through Harvard).

Working Flow-Chart

Based on community feedback the [job aid flowchart](#) has been modified. This chart is a working draft and not final.



For Harvard student's payroll options may be:
MTF – 6140, WTM – 6110,6120

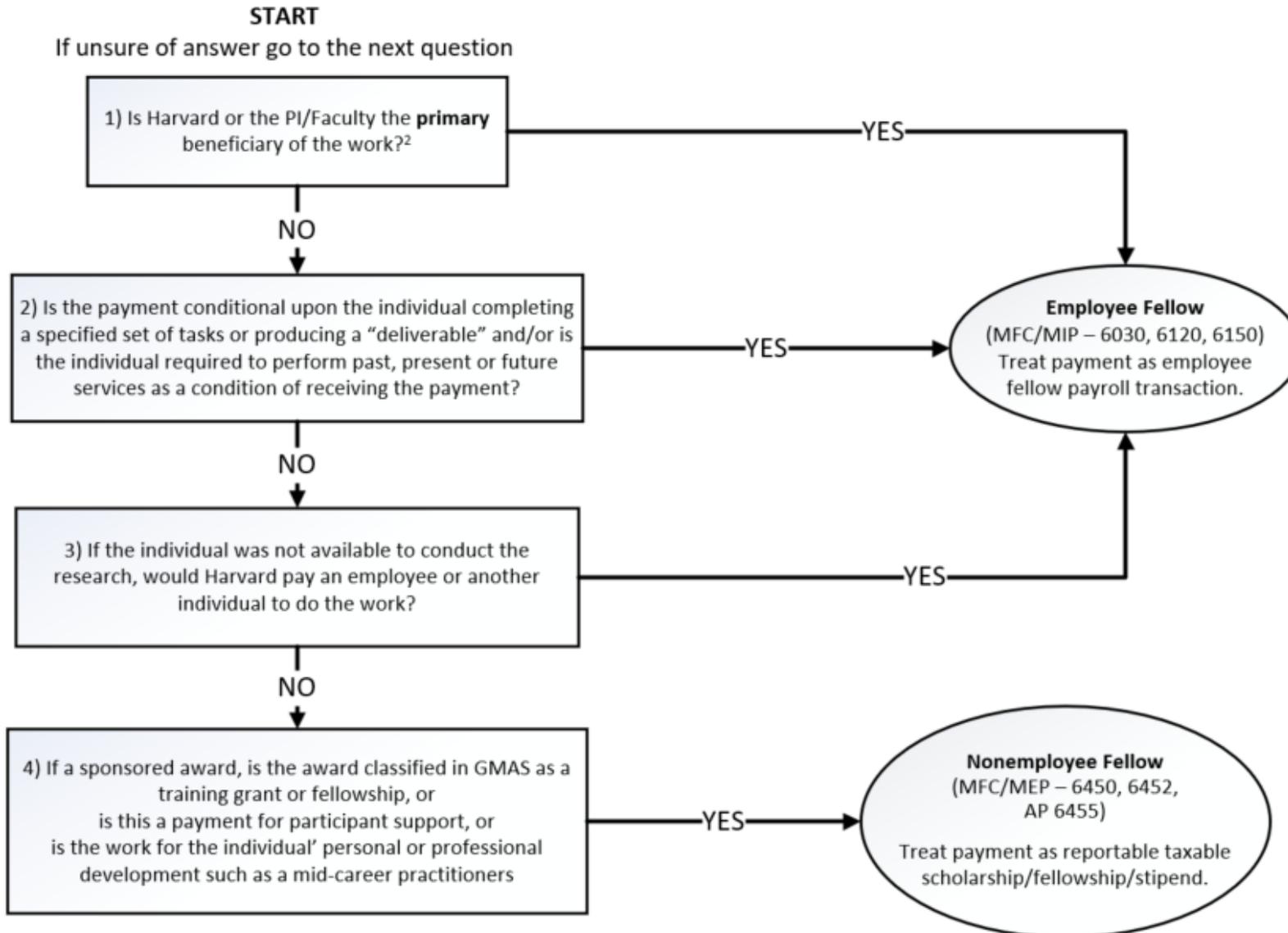
Stipends:
MST – 6440, AP 6460, 6461

Example 1 – Annie Easley

Based on community feedback the [job aid flowchart](#) has been modified. This chart is a **working draft and not final**.

Annie (a doctoral candidate) applied for and received a National Research Service Award (NRSA) from the National Institutes of Health (NIH).

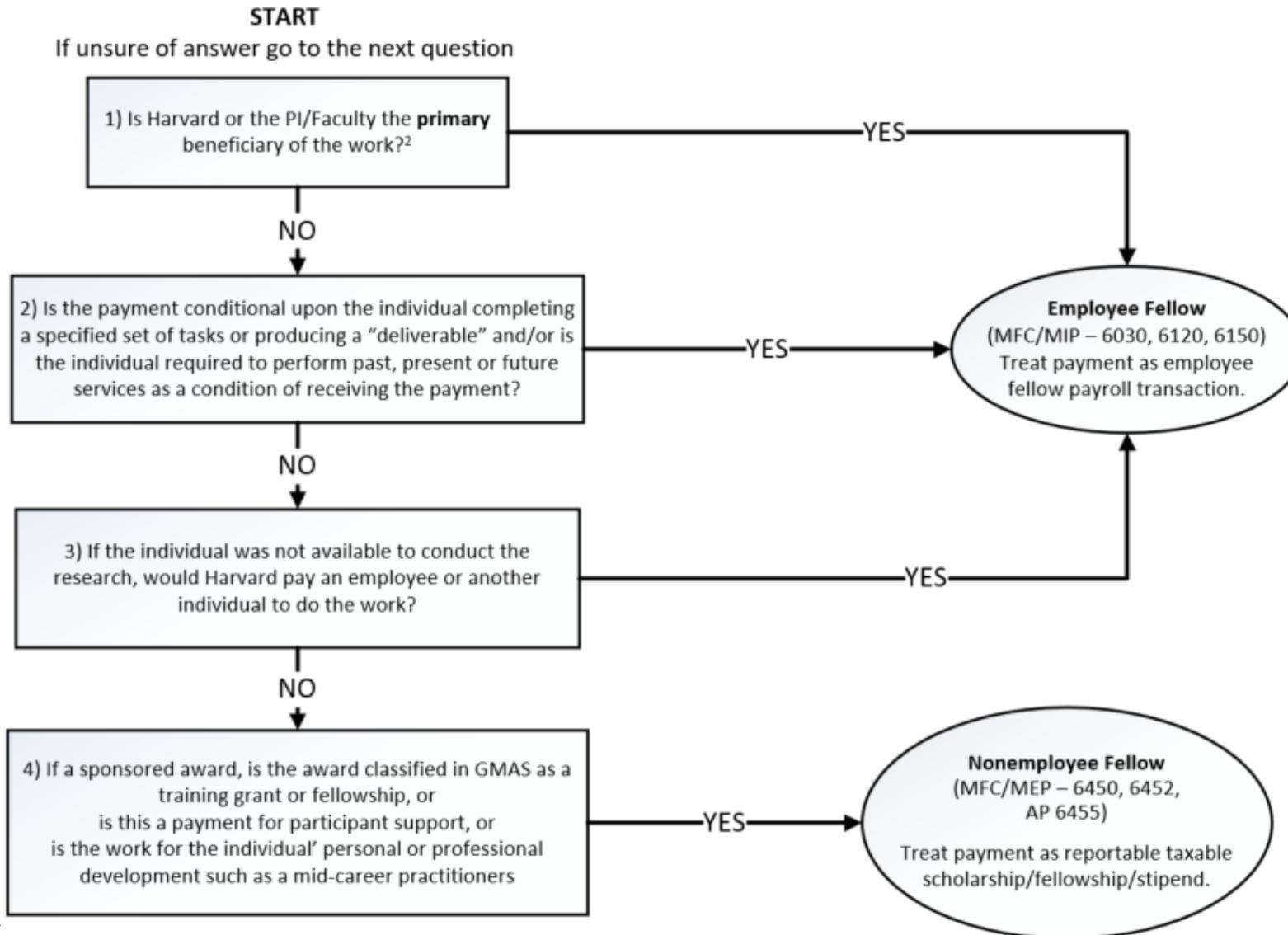
1. Harvard or the PI/Faculty is **not** the primary beneficiary of the work, AND
2. The payment is **not** conditional upon the individual completing a specified set or tasks or producing a “deliverable”, AND
3. Harvard **would not** pay another individual to complete the work, AND
4. The award is classified in GMAS as a fellowship.



Classified as a nonemployee fellowship – process payment as a stipend payment

Example 2 – Carlos Juan Finlay

Based on community feedback the [job aid flowchart](#) has been modified. This chart is a working draft and not final.



Carlos is a graduate student whose doctoral dissertation focuses on yellow fever. His dissertation advisor is also doing work on yellow fever and has asked Carlos to work in her lab. The work Carlos is doing will be used in his dissertation but will also be used by and directly relates to work that the PI is doing in the lab.

1. Harvard or the PI/Faculty **is the primary** beneficiary of the work, AND
2. The payment **is** conditional upon the individual completing a specified set or tasks or producing a “deliverable”, AND
3. Harvard **may** have paid another individual to complete the work, AND
4. The work is not a training grant or fellowship in GMAS, is not for participant support, and is not primarily for personal / professional development.

Classified as an employee fellowship – process payment as compensation.

Impact on Appointments

What do I do when...

An individual may have changes to their funding, duties, or take on additional or different work such as:

- An individual is an employee fellow but receives additional funding that may make them a nonemployee fellow.
- The benefit to Harvard changes.
- They are on more than one costing string.
- They are working on more than one project.

Let's review some options

NOTE: It's important to check with your central payroll and HR office regarding their policies around appointments and payments.

Secondary Appointments

If a recipient has **two discrete roles and duties** and is receiving separate funding for each, it may be appropriate they be treated as two different appointments and classifications (e.g., one appointment as an employee fellow and another as nonemployee fellow).

- Some sponsors may have restrictions around multiple appointments. Confirm with the fund terms and conditions before giving a secondary stipend or employee appointment.
- If sponsors allow secondary appointments, then the discrete roles and separate work must be documented with detail as evidence that they are different roles.
- Employee fellows may hold multiple appointments if the combined appointments do not exceed one FTE. Students have more restrictive FTE limits.
- Check with your central HR and Payroll office for restrictions.

Supplementing Payment

To supplement a payment means to provide additional financial support to an individual from a different funding source (typically non-sponsored or institutional funds).

- Supplementation often occurs when there is a gap between the stipend amount received from a fellowship and the amount specified in the individual's Harvard appointment letter.
- The supplement is payment to support work on the original funding source, so the source of payment should align with the original scope of work and cannot be different or separate from the primary appointment.
- **Stipend supplementation should not be confused with using formal salary compensation.**
- Stipend supplements should not be charged to sponsored awards.
- To supplement a payment, you do not need to set up a secondary appointment, you change the costing allocation.

Examples – 1 – Kenneth Toovak – Secondary Appointment

Kenneth Toovak is receiving a stipend as part of sponsored award, but has the opportunity to do different work that provide a benefit to research award in the lab he is working in.

- The terms of his existing nonemployee fellowship allow him to have additional appointments, AND
- The work he is doing for the PI is separate and distinct from the activity for which the stipend is paid, AND
- The work is for the benefit of Harvard.

Classified as an employee fellowship – appoint as a separate job and pay as compensation.

Example 2 – Annie – Supplemental Funding

Annie received the NRSA Fellowship which was classified as a nonemployee fellowship – stipend payment. The primary funds for the fellowship can only pay 90% of her graduate student stipend. The school chooses to “make-up” the difference using discretionary funds.

1. The school is not requiring any additional or different duties to receive the supplemental funds, but support work on the main NRSA funding source
2. The terms of the original award allow additional financial support.
3. The school has discretionary funds that can support the supplemental funding.

Classified as a supplemental nonemployee fellowship support – process payment on the original fellowship appointment with 10% supplemental funding charged to a different coding string.

Processing Payments and Misclassifications

Appointment Changes and Misclassification

Hiring departments must be sure to consider any implications with changes to an appointment due to new funding sources, duties, or misclassification.

- A misclassification may result in adverse tax or other consequences to Harvard and/or the individual.
 - These may include loss of benefits, unreported taxes which may incur fees and fines, risk to an individual's visa status, etc.
 - The school or unit may not be able to charge expenses to a sponsored funding source, may be liable for additional tax withholding or fringe rates, etc.
 - This may impact effort certifications and compliance with [Harvard's Effort Reporting Policy](#).
- Misclassifications must be corrected within a certain period and must follow certain steps in order to adjust any W-2, 1099, or 1042 tax forms as well as comply with state and federal tax reporting and withholding requirements. Additional materials are being created since adjustments must be made within PeopleSoft regarding tax withholding, etc.
 - Schools and Local Units should coordinate this process with their Finance Office or Payroll Office who may contact financialpolicy@harvard.edu for additional guidance.
 - For charges to sponsored awards, contact OSP for guidance around correcting misclassifications.

Take Aways

- ❑ Departments should develop or be aware of the scope of work / duties of the individual as soon as an “appointment” is created in order for proper budgeting and classification.
- ❑ Classification is based on the scope of work / activities of the individual not what they might be called.
- ❑ Use the [flowchart and / or checklist](#) to help determine classification. For questions reach out to your local HR or Faculty Planning Office for additional guidance.
- ❑ Make sure that appointments have been made correctly by reviewing the general ledger coding string and appointment and make any changes in a timely manner.
- ❑ For sponsored awards see [Sponsored Life Cycle Considerations](#) under related resources.

Send comments and feedback of the draft guidance to financialpolicy@harvard.edu by 5/31/23

Resources

Reference Materials

[Classification of Employee Fellows vs Nonemployee Fellows](#)

[Effort Reporting Policy](#)

[Fellowship Payments and Reimbursements for Students and Non-employee Postdocs/Fellows](#)

[Fellowship, Prize, Award, Grant, Allowance Session Slide Deck](#) – see recording on [Financial Policy Page](#)

[Fellowships Toolkit](#)

[General Fellowship Information Brochure](#) – Handout for fellows/recipients

[GLACIER Instructions](#)

[Honoraria and Reimbursements for Foreign Nationals](#)

[Independent Contractors](#)

[IRS Publication 970 – Tax Benefits for Education](#)

[Remote Employment Guidance and Payroll Policy](#)

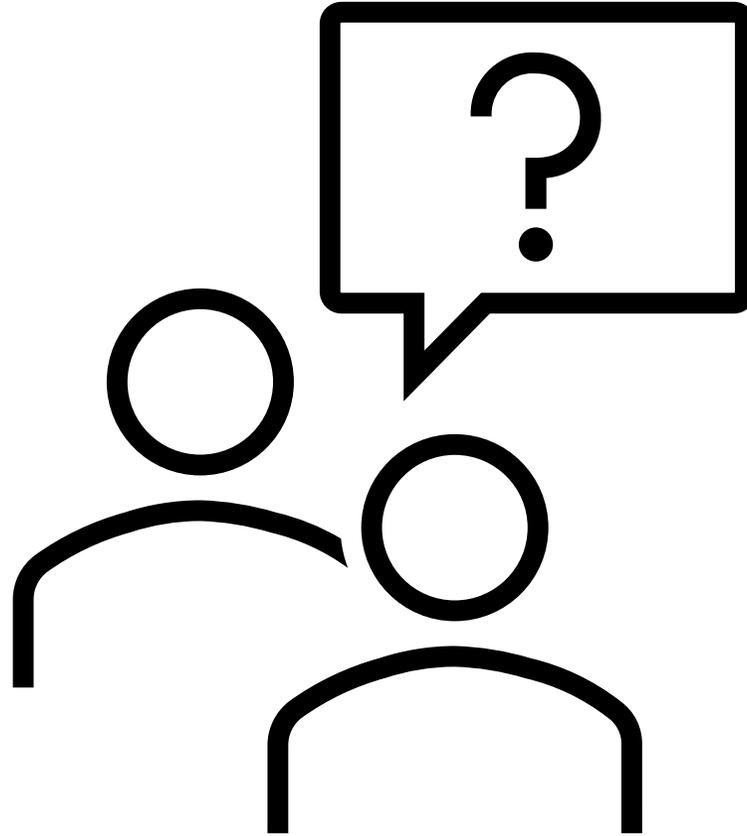
[Sponsored Program Policies](#)

[Sponsored Tuition Policy](#)

[Training Portal](#)

[Travel Policy](#)

Questions / Feedback / Concerns?



Appendix

Appendix

- A. Taxability of Payments
- B. Sample Checklist for Classifying Employee Fellow vs Nonemployee Fellow
- C. Flowchart for Classifying Employee Fellow vs Nonemployee Fellow
- D. Processing Payments

A. Sample Taxability of Payments

The taxability of payments depends on the payment type (employee fellow compensation vs nonemployee fellowship stipend) and the U.S. tax status of the recipient. See [Fellowship Payments and Reimbursements for Students and Nonemployee Postdocs/Fellows](#).

	U.S. Employee Compensation/Salary & Wages	U.S. Nonemployee Fellowship/Stipend
U.S. Tax Residents	<ul style="list-style-type: none">• Harvard is required to report payments to the IRS and to the recipient on Form W-2• Subject to federal and state income tax withholding and also Social Security and Medicare (FICA) tax withholding	<ul style="list-style-type: none">• Harvard is not required to report payments to the IRS or to the recipient• No withholding is required• Recipient must self-report as gross income
Nonresident Aliens	<ul style="list-style-type: none">• Harvard is required to report payments to the IRS and to the recipient on Form 1042-S if a tax treaty applies or Form W-2 if no tax treaty applies• Withholding is required (usually at 14% or 30%) but may be reduced by tax treaties if available	<ul style="list-style-type: none">• Harvard is required to report payments to the IRS and to the recipient on Form 1042-S• Withholding is required (usually at 14% or 30%) but may be reduced by tax treaties if available

B. Checklist Sample

Job Aid:

Checklist for Classifying Employee Fellow vs. Nonemployee Fellow

This job aid is for local department use only and does not need to be retained locally or sent to Central Accounts Payable or NRA Tax Compliance Office. See [Classifying Employee Fellow or Nonemployee Fellow](#) or the [Flowchart](#) for additional details.

All classifications must be based on the specific facts and circumstances of an individual's responsibilities. What a department calls a payment or job title does not determine legal classification. **An individual's or hiring department's preference and budget cannot influence the classification determination.** As stewards of University resources, it is essential that departments classify employees and nonemployees correctly to protect both Harvard and the individual.

NOTE: Departments must confirm that an individual's visa status allows them to be paid based on the classification. For example, recently graduated students with an Occupational Practical Training (OPT) may not be paid as a nonemployee fellow. In some cases, an individual may not be permitted to work on a project based on their classification, visa type, and work location.

Individual Name: _____ Faculty Advisor: _____

Funding Source (check one):

- NIH National Research Service Award (NRSA):** NIH NRSA Training grants are always classified as a nonemployee fellow per IRS 201705001 (117.05-00, 117.05-06).
- Federal Award:** Generally federal funding is compensation for services (employee fellow). Nonemployee fellow/stipend/training payments are only allowed on specific grant types or for participants (i.e., training or fellowship grants, participant support costs). Use the checklist below if there is uncertainty.
- Non-Federal Award/Grant/Gift/Endowment:** Classification varies based on the nature of the funding awarded and scope of work/duties. Use the checklist below if there is uncertainty.
- Other** _____ Classification varies based on the nature of the funding awarded and scope of work/duties. Use the checklist below if there is uncertainty.

Funding Source Name: _____

Award/Project Name: _____

Attach a description of the work or a copy of the award letter.

Control and Direction	Characteristics of an Employee Fellow	Characteristics of a Nonemployee Fellow
Is the individual doing work previously done by an employee fellow or are they acting as a replacement or substitute for an employee fellow, such as a research assistant/associate?	<input type="checkbox"/> Yes*	<input type="checkbox"/> No
Would an employee (regular or employee fellow) have to perform any of the work if this grant had not been awarded?	<input type="checkbox"/> Yes*	<input type="checkbox"/> No
Does the individual determine the research topic and activities based on the terms of the grant/fellowship? A faculty advisor may assist and consult with the individual.	<input type="checkbox"/> No	<input type="checkbox"/> Yes

Who benefits from the work?	Harvard is primary beneficiary	Individual is primary beneficiary
Will Harvard be the primary beneficiary of the work or activity? (See primary beneficiary guidance, below.)		
Does Harvard determine the research and activities based on its needs (e.g., completing work on a University research grant)?	<input type="checkbox"/> Yes*	<input type="checkbox"/> No
Selection of Individual		
Was the individual selected on the basis of experience?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is the amount of the fellowship based on compensation of employees performing similar activities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the sponsor require a particular payment classification?	Follow sponsor restrictions.	

*A "Yes" response to this question is a strong indication that the department should classify the recipient as an employee.

Based on the above, it is my determination that the individual should be most properly classified as an (check one):

- Employee Fellow¹ Nonemployee Fellow

Additional Notes

Primary Beneficiary: Harvard or the grantor/sponsor is the primary beneficiary if one or more of the following is true:

- services are for a grant that has a deliverable to the sponsor;
- individual is performing a function that directly enhances the program or activities of Harvard or the sponsor;
- individual is participating in an activity that generates income to Harvard or the sponsor;
- primary purpose of the work is for Harvard to obtain useful results from the individual's research;
- Harvard or the PI determines the research activities.

¹ In limited circumstances, if a payment is in exchange for services but Harvard does not control the work, the payment could be considered independent contractor income rather than employment income. That would not be the norm in a research or academic context. Please review the [Independent Contractor Policy](#) and consult with your local Human Resources Office for additional guidance.

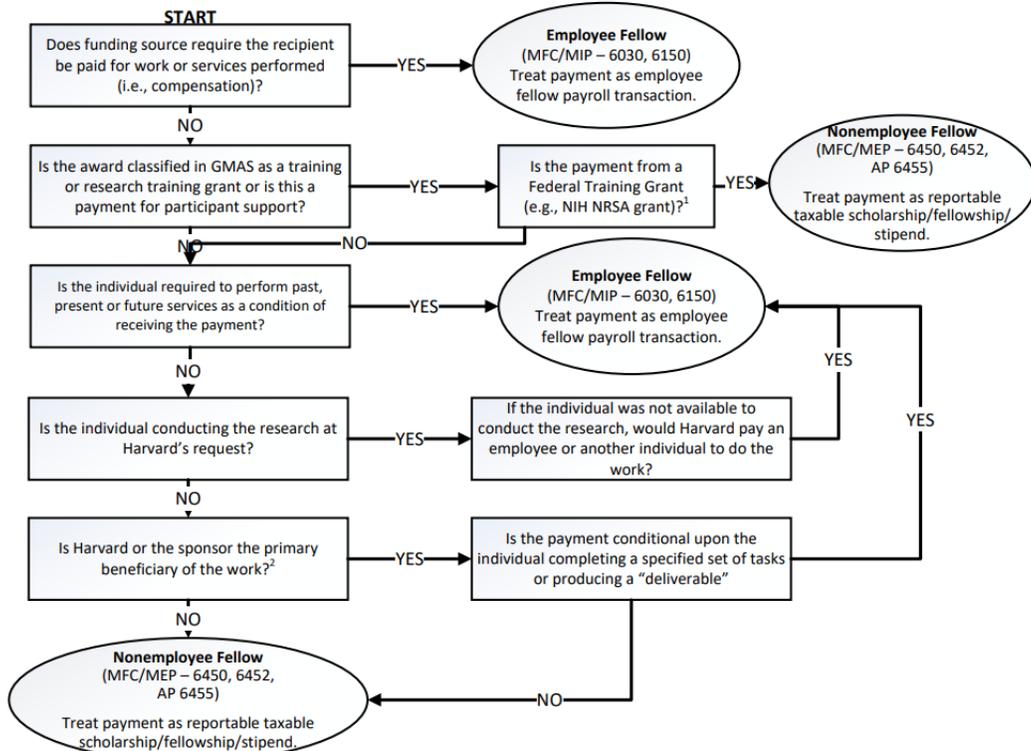
C. Current Flowchart Samples Posted with Guidance

This is the flowchart posted on the [Policy Website](#). However, based on review, we are updating the flowchart with the latest version show on slide 12.

Employee Fellow or Nonemployee Fellow Flowchart (Nonstudent or Non-Harvard Student)

12/05/2022 Working Draft – Comment period through 5/31/23. Submit feedback to financialpolicy@harvard.edu

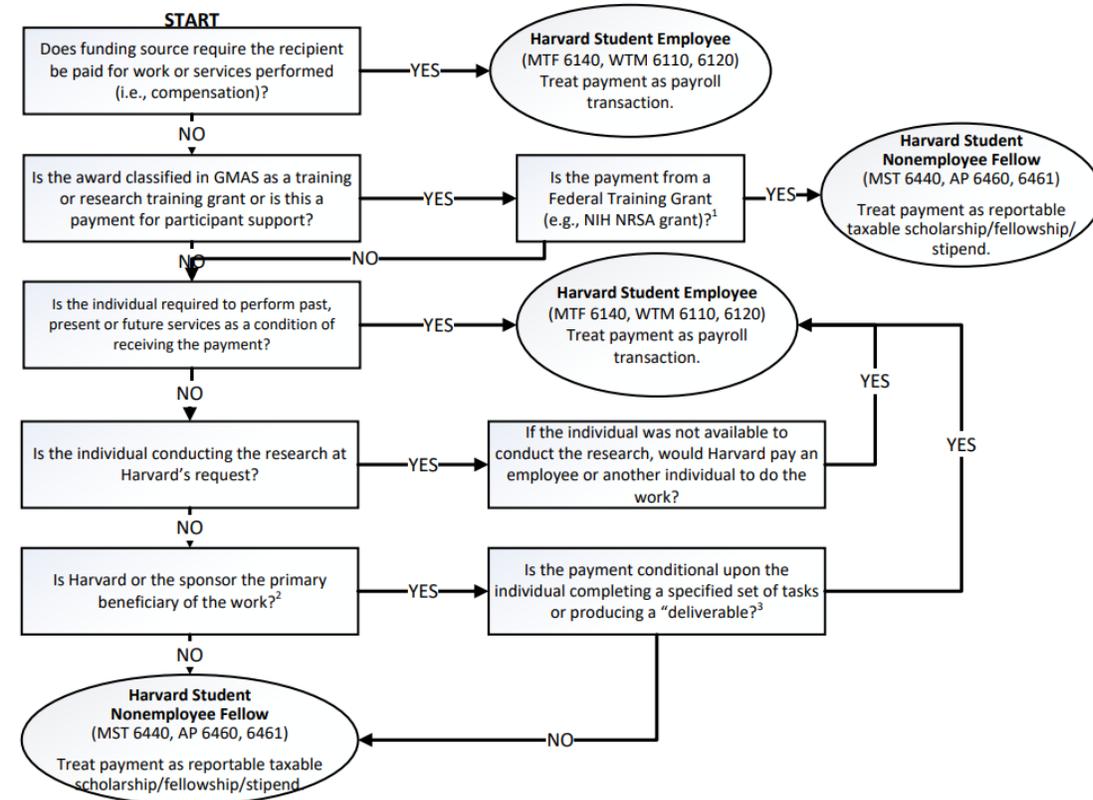
Note: The term fellow may be used interchangeably with other terms such as scholar, Post Doc, trainee, grantee, stipendee, scholarship, awardee, etc.



Employee Fellow or Nonemployee Fellow Flowchart (Harvard Student)

12/05/2022 Working Draft – Comment period through 5/31/23. Submit feedback to financialpolicy@harvard.edu

Note: The term fellow may be used interchangeably with other terms such as scholar, Post Doc, trainee, grantee, stipendee, scholarship, awardee, etc.



Processing Payments

Based on classification, visa type, and work location, additional restrictions may apply. See the [Payroll Policy website](#). In all cases, salaries and stipends should adhere to the minimums set by state, grant, and local schools.

Employee

- Compensation/salary and wage payments are made through PeopleSoft for those working in Harvard Registered Payroll states.
- These payments are reported on a Form W-2 or Form 1042-S (if a foreign national and a tax treaty applies).
- Individuals seeking to work in a non-registered payroll state or outside of the United States must comply with the [Payroll Policy](#).

Nonemployee

- Fellowship/stipend payments may be processed via PeopleSoft or by Accounts Payable. *Check with your local academic or student affairs office for school-specific policies and processes.*
 - PeopleSoft Payments: generally recurring payments paid directly to the individual and processed via the Monthly Stipend Process (MST) using object code 6440 or Monthly External Payroll (MEP) using object codes 6450 or 6452. These payments are overseen and administered by the school's financial aid office and considered U.S. sourced income.
 - Accounts Payable Payment: Generally processed as one-time stipends/ fellowships/ awards/ grants. Be sure to use appropriate object code and note the period and location of the activity. Special rules apply for foreign individuals, see NRA Tax Compliance [Location of Activity](#).