MEMORANDUM

DATE: March 5, 2004

TO: Deans, Directors, and Department Heads

FROM: Linda Barrett, Director of Budget and Financial Planning

SUBJECT: Immigration and Naturalization Service Laws Governing Payments to Short-Term Foreign National Visitors

The purpose of this memo is to inform you that the Immigration and Naturalization Service (INS) and Internal Revenue Service (IRS) have several laws you must observe in inviting and compensating foreign nationals, a.k.a. Nonresident Aliens or NRAs. In particular, **these foreign national individuals must possess the proper visa type to receive an honorarium.** The INS is very serious about the enforcement of these laws, and penalties can be severe if it is determined that an institution is not complying. These penalties range from stiff monetary fines, to denying an institution’s ability to sponsor foreign national visitors altogether. Please review the following procedures before you begin the process of inviting a foreign national to campus.

Unfortunately, we cannot rely on the U.S. embassies or consulates to properly counsel our foreign visitors about obtaining the proper visa. Therefore, if you are responsible for inviting a foreign visitor to whom you wish to make some form of payment or restitution, please contact the International Students and Scholars Office at 4-2294. This will ensure your visitor arrives with the proper visa so that the university can pay what you have promised.

There are two different payment options for short-term foreign national visitors. **The IRS imposes less complex rules in paying travel reimbursements than honoraria.** Travel reimbursements made to NRAs for the purpose of defraying or reimbursing travel, meals and lodging expenses are not subject to withholding taxes. Since these payments are excludable from their gross income and are not reportable to the IRS, we will not require a copy of their passport or visa. A travel voucher form with attached receipts should be completed using standard university travel reimbursement procedures. However, please be aware that if the NRA is paid on a per diem allowance instead, such payments are fully taxable.

The most common visa types that allow compensation for an honorarium are B-1, B-2, WB, WT, TN, and J-1. The B-1, B-2, WB and WT visa holders can be paid honoraria only if they are at the university no longer than 9 days and have not accepted payment or expenses from more than 5 institutions in the previous 6 month period (9-5-6 rule). The B-1 and B-2 visas are obtained by NRAs in their home country. Canadians admitted without an I-94 or TN visa are considered to be on a B-1 or B-2 visa. WB and WT visa waiver stamps are given to citizens of the following countries by simply completing the I-94W form upon entry into the US, so long as certain requirements are met. These countries currently are: Andorra, Argentina, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, San Marino, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. Please refer to the following US State Department web site for additional information and detailed visa requirements: http://travel.state.gov.

*The University of Rhode Island is an affirmative action and equal opportunity employer.*
Visitors that are to receive honoraria and exceed the 9-5-6 rule will need to get a J-1 visa or, if Canadian or Mexican, a TN visa (for certain occupations only). A J-1 visa requires that the university prepare form DS2019, Certificate of Eligibility for Exchange Visitor Status, that must be sent to the invitee prior to their going to the embassy or consulate for their visa. **Obtaining the J-1 visa requires 4 to 8 weeks of advance planning.** Before we can compensate a J-1 Exchange Visitor sponsored by another university, we are required to have prior written authorization from that university’s “responsible officer” such as their International Student Advisor. Permission letters from academic departments are not acceptable for this purpose.

**Honoraria payments are subject to federal income tax withholding at 30% unless specifically exempted by an income tax treaty.** There are tax treaties with over 45 countries. Each treaty is unique. To claim a tax treaty exemption, the IRS requires that the NRA complete a form 8233 at least 10 days prior to payment. If not exempted by tax treaty, the department should notify the NRA that taxes must be withheld. For honoraria payments, the IRS also has the following requirements:

- The NRA must have either a Social Security Number (SSN) or an Individual Taxpayer Identification Number (ITIN). We recommend that these numbers be applied for prior to their visit, as the **NRA must have either a SSN or ITIN number for us to process the payment.**

- The NRA must complete a W-8 Honorarium form, and

- The NRA must file a U.S. tax return using the 1042S and/or W-2 form which will be sent to them by the university at the end of the calendar year.

For an honorarium, attach a legible copy of the first page of the passport, visa and I-94 card to the accounting voucher after the NRA’s arrival. For J-1 visas, also attach a copy of the pink DS2019 that was stamped by the INS. If we are not the sponsoring school for a J-1 visa holder, attach the written authorization from the sponsoring school’s “responsible officer.” Submit the voucher and all required information to Jim Cacciola, Payroll Office. **Honoraria checks to foreign nationals may be processed only after a complete packet of documentation is received and reviewed by the Controller’s Office for compliance with IRS and INS regulations.** Payments to NRAs cannot be prepared in advance, as we are never sure of the person’s visa until they actually arrive. If it is determined that the individual does not have the proper visa for the type of payment, the university will not process the payment. As this can be extremely embarrassing to the university and to you, please ensure your visitors are properly informed well in advance of their departure.

We cannot make any exceptions to these federal requirements. If you need any additional information, forms or assistance, please feel free to call our Director of International Education and National Student Exchange, Dania Brandford-Calvo at 4-2294 or Jim Cacciola, Assistant Controller for Payroll and Taxes at 4-5207. Thank you.