

**3rd Annual Foreign National Taxation & Immigration
Compliance Conference**
Continuing Professional Education
North Carolina Office of the State Controller &
North Carolina State University*

Day 1

- Date:** October 8, 2014
12:00 p.m. to 5:00 p.m.
- Location:** James B. Hunt Jr. Library on Centennial Campus
1070 Partners Way, Raleigh, NC 27606
- Objective:** To provide a basic understanding of Foreign National Taxation and Immigration compliance.
- Content:**
- Immigration Basics:
 - Overview of relevant basic immigration classifications,
 - Information about work authorization eligibility
 - Foreign National Payment and Taxation Basics:
 - Overview of Internal Revenue Service rules regarding payment and taxation of foreign nationals
 - Immigration and tax documents needed for compliance
 - Tax Assessments 101:
 - Workshop session with “how to” sample scenarios
 - Necessary forms and process
 - Determining tax treaty eligibility
 - Do’s and don’ts
 - Audit file creation
- Instructors:**
- Michelle Anderson, University Program Manager International Employment and Taxation, NC State University;
 - Jill Blitstein, JD, International Employment Manager - Human Resources, NC State University ;
 - Jennifer T. Pacheco, CICA, NC OSC Foreign National Tax Compliance Program, NC Office of the State Controller
- CPE Credit Offered:** 4.5 hours
- Materials:** Notebooks will be provided morning of conference.
- Teaching Method:** Lecture
- Prerequisites:** n/a
- Advance Preparation:** None
- Level:** Basic

* Click the following links for additional information about the [NC Office of the State Controller](#) or [NC State University](#), the sponsors and developers of this program.

3rd Annual Foreign National Taxation & Immigration Compliance Conference

Continuing Professional Education
North Carolina Office of the State Controller &
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Day 2

- Date:** October 9, 2014
8:00 a.m. to 5:00 p.m.
- Location:** James B. Hunt Jr. Library on Centennial Campus
1070 Partners Way, Raleigh, NC 27606
- Objective:** To provide an advance understanding of Foreign National Taxation and Immigration compliance.
- Content:**
- USCIS:
 - Potential topics include EAD issues
 - New rule that some H-4s can work
 - IRS:
 - Potential topics include new W-8BEN and W-8BEN-E forms
 - Basics Foreign Account Tax Compliance Act [FATCA]
 - Affordable Care Act [ACA] and ITIN rules
 - Best Practices and Round Table Discussion Scenarios
 - Ideas for creating a more compliant program
 - Implementing policies and procedures to ensure accountability
 - Partnering with colleagues
 - Raising visibility (and identifying risks) within your institutions
 - Sample payment and immigration scenarios for discussion
 - Affordable Care Act (ACA) – Implementation January 1, 2015
 - High level overview of the ACA law as it relates to your foreign nationals
 - Eligibility
 - Measuring periods
 - Stability periods
- Instructors:**
- Michelle Anderson, University Program Manager International Employment and Taxation, NC State University;
 - Jill Blitstein, JD , International Employment Manager - Human Resources, NC State University ;
 - Bridget Bishop, Immigration Staff Attorney - Office of Legal Affairs, UNC General Administration
 - Jennifer Pacheco, CICA, NC OSC Foreign National Tax Compliance Program, NC Office of the State Controller;
 - Joe Williams, M.Ed., SPHR, Director of Employee Benefits and Programs, NC State University
 - Lisa Wohlrab, Supervisory Immigration Services Officer, United States Citizenship and Immigration Services
 - Tracy L. McFee, International Individual Compliance in the Large Business and International Division , Internal Revenue Services
- CPE Credit Offered:** 7.5 hours
- Materials:** Notebooks will be provided morning of conference.
- Teaching Method:** Lecture
- Lunch:** 12:00 p.m. – 1:00 p.m.
- Prerequisites:** Knowledge of Basic Foreign National Immigration and Taxation
- Advance Preparation:** None
- Level:** Advanced

** Click the following links for additional information about the [NC Office of the State Controller](#) or [NC State University](#), the sponsors and developers of this program. Additional developer of this program is [UNC General Administration](#).



Tentative Conference Agenda

**Foreign National Taxation and Immigration
Compliance Conference**
Hunt Library
October 8-9, 2014

Wednesday, October 08, 2014

12:00 pm – 1:00 pm		Registration
1:00 pm – 1:15 pm	Refreshments Provided	Welcome Remarks
1:15 pm – 2:15 pm		Immigration Basics Overview of relevant basic immigration classifications, including information about work authorization eligibility
2:15 pm – 3:15 pm		Foreign National Payment and Taxation Basics Overview of IRS rules regarding payment and taxation of foreign nationals, as well as immigration and tax documents needed for compliance
3:15 pm – 3:30 pm		Break
3:30 pm – 5:00 pm		Tax Assessments 101 Workshop session with “how to” sample scenarios: necessary forms and process; determining tax treaty eligibility; do’s and don’ts; audit file creation
5:00 pm to 7:00 pm		FNTICC Networking Social (Optional) FNTICC will be hosting a networking event at the brand new NCSU Lonnie Poole Golf Course Clubhouse. Come meet and mingle with other conference participants.

Thursday, October 09, 2014

8:00 am – 9:00 am		Registration
9:00 am – 9:15 am	Refreshments Provided	Welcome Remarks
9:15 am – 10:15 am		USCIS (Invited speaker: potential topics include EAD issues; new rule that some H-4s can work?)
10:15 am – 10:30 am		Break
10:30 am – 12:00 pm		IRS (Invited speaker: potential topics include new W-8BEN and W-8BEN-E forms; new Foreign Account Tax Compliance Act [FATCA], and ITIN rules)
12:00 pm – 1:00 pm		Lunch
1:00 pm – 3:00 pm		Round Table Discussion Scenarios Sample payment and immigration scenarios for discussion, such as: honoraria; visiting artistic groups; paying someone else’s H-1B employee; employment and payment of F-1 students with CPT and/or OPT; 1099 vs 1042-S
3:00 pm – 3:15 pm		Break
3:15 pm – 4:15 pm		Best Practices Ideas for creating a more compliant program: implementing policies, procedures and accountability; partnering with colleagues; raising visibility (and identifying risks) within your institutions
4:15 pm - 4:45 pm		Affordable Care Act (ACA) The Affordable Care Act (ACA) will have wide-reaching effects not only on U.S. citizens but also those visiting from abroad. This session will give you a high level overview of the ACA law as it relates to your foreign nationals. Eligibility, measuring periods and stability periods will be discussed so that you are fully informed when the employer mandate goes into effect on January 1, 2015.
4:45 pm – 5:00 pm		

Speaker Biographies

Michelle Anderson is the Foreign National Tax University Program Manager for North Carolina State University. At NC State, Michelle is responsible for all payments and tax paperwork for NC State's foreign national population and advises other departments on outside payments made to nonresident visitors. She has been working in the field of Human Resources and Payroll for 14 years, and has specialized in International HR and Payroll for the last ten years. Before working at NC State, Michelle worked for various companies with international divisions, where she first gained experience in international human resources and payroll. She frequently provides training to HR and Accounting professionals on international tax and immigration classifications, travel payment issues, and other immigration and tax compliance requirements. Michelle is a graduate of North Carolina Wesleyan College with a degree in history with a concentration in international history. She is currently a member of the Triangle Society of Human Resource Management's Global Group and NAFSA: the Association of International Educators.

Bridget Bishop, a member of the North Carolina State Bar and the American Immigration Lawyers Association, received her Juris Doctor degree from the University of North Carolina School of Law and her Bachelor's degree from the University of Virginia. After law school, Bridget was a law clerk for the Honorable Linda McGee on the North Carolina Court of Appeals and thereafter worked in private practice focusing on immigration law before joining the University of North Carolina General Administration.

Jill Blitstein is the International Employment Manager at North Carolina State University and has over 16 years of immigration experience. Her current position involves assisting departments, faculty and staff with employment-based immigration and visa issues, and overseeing the employment eligibility verification process and compliance procedures at NC State University. Jill received her law degree from DePaul University College of Law in 1995 and is licensed to practice law in Illinois. Prior to joining NC State, she was an Associate/Senior Associate at the Chicago Office of Fragomen, Del Rey, Bernsen & Loewy, a global immigration law firm, from 1997 to 2007. She has provided training to HR and legal professionals on various immigration topics, including nonimmigrant classifications, permanent residence, visa and travel issues, and employment eligibility verification and compliance. Jill is a co-planner and speaker at the Foreign National Taxation and Immigration Compliance Conference which has been hosted annually by NC State University and NC Office of State Controller since 2012. In May 2013, Jill testified on Capitol Hill before a House Judiciary Subcommittee on E-Verify. Jill has been a member of the American Immigration Lawyers Association (AILA) since 1998, and the College and University Professional Association for Human Resources (CUPA-HR) since 2013.

Tracy L. McFee is a CPA licensed in North Carolina. She has worked for the Internal Revenue Service since 1990. During her IRS career, Tracy has taught many courses to both internal and external audiences on a variety of international and domestic tax topics including tax residency,

taxation of nonresident aliens, foreign tax credits, passive activities and tax issues related to LLCs. Tracy has also been a featured speaker at IRS meetings held with the North Carolina Association of CPAs and numerous practitioner groups.

Tracy has been with International Individual Compliance in the Large Business and International Division of IRS since 2009, and is currently an International Technical Specialist. Over the course of her 24 year career, Tracy has held a variety of other positions with the IRS, including Internal Revenue Agent, Tax Compliance Officer International Group Manager, Senior Tax Specialist, Tax Compliance Officer and Tax Examiner.

Jennifer Pacheco, Certified Internal Control Auditor, is the Office of the State Controller's lead contact for the Foreign Nationals Tax Compliance Program and serves as a back-up for the state's tax compliance initiative. Jennifer graduated from Appalachian State University with a degree in Accounting and works in the Risk Mitigation division, which assists the state agencies, universities and community colleges with the Statewide Internal Control Program. She also serves as Internal Auditor for State Controller's Office. She began working with the Foreign Nationals Program in early 2009. Within the Foreign Nationals Program, Jennifer provides strategic consultation and training to state agencies, universities, community colleges and local education agencies and charter schools on tax and immigration issues. Jennifer has coordinated the overall implementation efforts of the foreign national tax compliance program within the State of NC. She has also conducted numerous training programs on foreign national compliance requirements and on the use of Windstar – the State's enterprise software solution for managing foreign national compliance. Prior to working with the State of NC, Jennifer worked for 2 years in finance and human resources as a financial controller for a private company. She started working with the State of NC in early 2003, with the Office of State Auditor, performing audits across North Carolina. Jennifer has been with the State of NC for over 9 years.

Joe Williams serves as the Director of Employee Benefits and Programs for NC State University. In this role, Joe leads a team of Benefit Professionals who serve over 8,000 employees in the areas of benefits, retirement, leave administration, workers compensation, employee recognition and wellness. Prior to his role at NC State, Joe worked in the corporate world in the Human Resource and Benefits arena. He has also worked in non-profit management roles. He holds a masters' degree in education, has a Senior Professional in Human Resources (SPHR) certification and is a Certified Benefits Professional (CBP).

Joe has been dubbed the "Chief Affordable Care Act Guy" by his colleagues. He has attended numerous conferences, webinars and training to learn more about this 2,700 page law known as the Affordable Care Act. He has worked diligently to ensure that NC State University is fully compliant with the ACA when the employer mandate goes into effect on January 1, 2015.

Joe is married and is part of a blended family with six children ranging in ages from 20 to 11. He enjoys boating with his family. Years ago he bought an older boat and has enjoyed restoring it. He and his family are usually found on the lake during the spring and summer months.

Lisa Wohlrab began her career with United States Citizenship and Immigration Services in 2005 as an Immigration Services Officer with the Hartford Field Office in Hartford, CT. In 2008, Ms. Wohlrab took a position in the Raleigh-Durham Field Office in Durham, NC as an Immigration Services Officer, where she coordinated the military naturalization program. In 2011, Ms. Wohlrab returned to her home state as a Supervisory Immigration Services Officer with the Buffalo Field Office in Buffalo, NY overseeing the adjudications program. In April 2012, Ms. Wohlrab returned to the Raleigh-Durham Field Office as a Supervisory Immigration Services Officer, where she currently manages the adjudications program and coordinates and conducts outreach in Eastern North Carolina. Ms. Wohlrab holds a Bachelor of Arts degree in International Studies with a minor in Marketing from the University at Buffalo, the State University of New York, in Buffalo, NY.

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Immigration Basics

3rd Annual FNTICC
October 8, 2014

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Disclaimer

- The information within this presentation does not constitute legal advice and each participant should seek his/her own counsel in addressing specific situations. NC State University and the NC Office of the State Controller are providing this content to enhance the knowledge of the participants in this conference.

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Overview of Content

- Government agencies involved in immigration process
- Immigration definitions
- Temporary, nonimmigrant classifications and related employment eligibility
- Permanent, immigrant (green card) status and related employment eligibility

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Involved Government Agencies

- Department of Homeland Security (DHS)
 - United States Citizenship and Immigration Services (USCIS)
 - Immigration and Customs Enforcement (ICE)
 - Customs and Border Protection (CBP)
- Department of Labor (DOL)
 - Part of H-1B process, part of some permanent residence processes
- Department of State (DOS)
 - Travel visas for entry into U.S. from abroad; sometimes part of the permanent residence process
- Internal Revenue Service (IRS)
 - Payment and taxation of foreign nationals while in the U.S.

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Immigration Definitions

- Foreign national
 - Someone not a citizen or national of the U.S. (aka "alien")
- Status
 - Foreign national's legal standing in the U.S. – how did they enter, what are they allowed to do while in the U.S., how long can they stay
- Visa
 - Travel document stamped in the passport; ONLY controls that person's ability to enter the U.S. from abroad during its validity period
- I-94 admission number
 - Formerly a small white or green entry/departure card received by everyone entering the U.S. except for U.S. citizens and permanent residents; controls how long a foreign national can stay in the U.S., and what s/he can do – still issued to some foreign nationals
 - Most visitors now just receive a stamp in the passport and instructions to go to a website to print our I-94 information (needed for I-9 form, tax assessments, SSN, driver's license, etc.)

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Nonimmigrant visa stamp

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I-94 cards

Form I-94 or Form I-94A Arrival/Departure Record

CBP and sometimes USCIS issue arrival-departure records to nonimmigrants. This document indicates the traveler's immigration status, the date that the status was granted, and where the status expires. The immigration status notation within the stamp on the card varies according to the status granted, e.g., L-1, F-1, J-1. The Form I-94 has a handwritten date and status, and the Form I-94A has a computer-generated date and status. Both may be presented with documents that Form I-97 specifies are valid only when Form I-94 or Form I-94A also is presented, such as the foreign passport, Form DS-2019, or Form I-20.

Form I-97 provides space for you to record the document number and expiration date for both the passport and Form I-94 or Form I-94A.

Form I-94 Arrival/Departure Record Form I-94A Arrival/Departure Record

Electronic I-94 information

U.S. Customs and Border Protection
Securing America's Borders

Get I-94 Number: I-94 TAG

Admission (I-94) Number Retrieval

Admission (I-94) Record Number: 6900688802

Admit Until Date (MM/DD/YYYY): 10/10/2012

Details provided on Admission(I-94) form:

Family Name: LI
First (Given) Name: LYDA
Birth Date (MM/DD/YYYY): 01/01/1990
Passport Number: P12121213
Passport Country of Issuance: Mexico
Date of Entry (MM/DD/YYYY): 04/11/2012
Class of Admission: B4

Individuals can visit www.cbp.gov/i94 to retrieve a copy of their electronic Form I-94.

Immigration Definitions

- Approval notice (for employment-based statuses)
 - Officially called a "Notice of Action" by USCIS
 - Form I-797 is issued by the USCIS indicating that a foreign national has been approved to be in the U.S. in a certain status for a defined period of time; also controls what s/he can do while in the U.S. in this status
- Form I-20 (for F-1 and M-1 students)
 - Form issued by sponsoring educational institution that indicates the start and end dates of the program of study
- Form DS-2019 (for J-1 exchange visitors)
 - Form issued by sponsoring entity that indicates the program start and end dates; J-1 visitor may be a student, scholar, short-term visitor, etc. (there are more than 20 different types of available J-1 programs)

Immigration Definitions

- Temporary (nonimmigrant) status [student, worker, visitor, etc.]
 - Limited by:
 - Time - duration of authorized period of legal stay in the U.S.
 - Scope - allowable activities
 - Location - specific employer, but also physical location
 - Must have nonimmigrant intent; no intent to stay in U.S. long-term
 - Generally indicated by alphabetical notation
- Permanent (immigrant) status [permanent resident]
 - Allows holder of this status to remain in U.S. indefinitely
 - Permanent Resident can live and work wherever, and work for whomever s/he chooses - no limitations based on time, scope, location
 - "Green card" is another way to indicate permanent resident status
 - Totally different from "resident alien" tax status!

Temporary Nonimmigrant Classifications

and Related Employment Eligibility

Pop Quiz!

- Are the H, TN, O and other nonimmigrant employment petitions legal property of the
 - Employer, or the
 - Foreign national?

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Alphabet Soup of Classifications

- Common nonimmigrant classifications for universities and state agencies
 - Specialty Occupation workers: H-1B
 - Free Trade workers: TN, E-3
 - Extraordinary Ability workers: O-1
 - Athletes and Artists: P-1
 - Exchange Visitors (students, scholars, trainees, interns): J-1
 - Students: F-1 and M-1 – primary purpose in U.S. is to study
 - Employment Cards: issued for people in certain statuses
 - Business Visitors: B-1, Visa Waiver/ESTA – not work authorized

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H-1B temporary workers

- For "specialty occupation" positions:
 - Professional position requiring a bachelor's degree or equivalent in related field as minimum
 - "3 for 1" experience equivalency rule
 - Position requirements are separate from worker's credentials
 - Degree must be related to the position
 - 6 year maximum limit (with certain exceptions), can only be requested in 3 year (or less) increments
 - Spouses and children in H-4 status cannot work (might change)
 - "Dual intent" status: can have both nonimmigrant and immigrant intent while in H-1B status

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H-1B temporary workers

- H-1B status is employer, location and occupation specific
- In most cases, H-1B employee cannot perform professional services for payment for any other entity other than the sponsoring employer
- Labor Condition Application (LCA): employer must pay higher of DOL's (or salary survey's) prevailing wage, or the actual wage being paid to similar employees
 - DOL wage database is adjusted every year on July 1
- Standard USCIS processing is 2-5 months, but for extra \$1,225 fee USCIS will process petition in 15 days
- Fees: \$325 for every H-1B petition (including extensions and amendments), \$500 for initial H-1B with that employer – employer must pay both fees per DOL; additional (ACWIA) fees possible

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H-1B temporary workers

- Can file H-1B petition up to 6 months in advance of start date, but worker must meet all requirements at the time the petition is filed
- If H-1B worker is terminated before the end date on the H-1B approval notice, employer must provide/offer 'reasonable costs of return transportation abroad'
- If worker is switching to H-1B status from another status (F-1, J-1), can continue to work in that status until it expires, if H-1B approval doesn't start first
 - There may be a gap in employment when changing from one status to another within the U.S., if the current/prior status expires while the H-1B petition is still pending with USCIS
 - EXCEPTION: STEM OPT EAD renewals; TPS renewals; "Cap gap" relief
 - If no exception applies, no "volunteering" and must come off payroll

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H-1B approval notice

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Free Trade Classifications

- TN status
 - NAFTA agreement between U.S., Canada and Mexico
 - Worker must be a citizen of Canada or Mexico
 - Canadians can apply at border
 - Mexicans can apply at U.S. consulate/embassy
 - Position must be in NAFTA Appendix
 - University Teacher, but no Professor, Lecturer or Instructor
 - Requires employer sponsorship and is employer-specific
 - Employee must have required academic credentials as listed in NAFTA Appendix; no experience equivalency is allowed
 - Admission period can be up to three years, with no limit on number of extensions BUT must be able to prove strong ties to home country – not a "dual intent" classification like H-1B

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Free Trade Classifications

- E-3 Specialty Occupation
 - Only available for citizens of Australia
 - Limit of 10,500 per year
 - As with TN, no USCIS petition is required, but employer must first prepare LCA form and get it certified by DOL
 - Employee can apply directly at U.S. consulate or embassy (after first receiving certified LCA from new U.S. employer)
 - Like H-1B, E-3 is employer, location and occupation specific
 - Two year admission period, no limit on number of extensions
 - E-3 spouses can apply for work authorization; kids cannot

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O-1 Extraordinary Ability

- Requires possession of "extraordinary ability" related to position and is employer-specific
- Applicant must meet at least 3 of 8 specific criteria
- Requires USCIS petition and approval
- Initial period of admission is three years, with only one year extensions thereafter – but there is no limit on the number of extensions possible
- Requires a lot of time and effort to prepare and file this petition (it is similar to preparing some permanent residence petitions), so it is not a quick or easy option

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P-1/2/3 Artists, Athletes and Entertainers

- P-1A: Internationally recognized athlete
- P-1B: Member of internationally recognized entertainment group
- P-2: Individual or group performer under reciprocal exchange program
- P-3: Artist or entertainer part of a culturally unique program
- U.S. employer or sponsoring entity must file petition with USCIS, and person must use approval notice to get visa stamp to enter
 - Entity must be listed on official agenda to pay person directly
- Information in the petition will determine how long person (and any dependents and essential support personnel) can stay in the U.S., and whether any extensions are permitted
- Each has certain criteria that must be met to qualify for status

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J-1 Exchange Visitor

- DOS has created approximately 22 different types of exchange visitor programs
- Immigration form is DS-2019; visitor needs permission to work or be at a location other than sponsor's location as listed on DS-2019
- Possible 2 year home residence requirement before person can change status to certain other classifications to be able to stay and/or work in U.S. (such as H-1B status)
 - If person doesn't want to leave, might be able to apply for and receive a waiver of this requirement
 - Requirement attaches based on Skills List, funding source or graduate medical education
- J-2 spouse can apply for employment card, but cannot work before card arrives, and must stop if card expires before new card arrives

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DS-2019 form for J-1 visitors

The image shows a sample DS-2019 form for J-1 visitors. A blue arrow points to the top section of the form, which contains the title and basic information fields. The form is a standard government document with various sections for personal information, sponsor details, and program specifics.

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F-1 Students

- F-1 student may be employed on-campus up to **20 hours/week** during classes, and full-time when school is not in session or during annual (summer) vacation (if student is not enrolled during the summer session)
 - Since the 20 hour/week limit applies across ALL jobs, at NCSU our policy is that F-1 students cannot be paid flat-rate so we can see hours
- Period of study end date in paragraph 5 on the I-20 immigration form indicates the expiration date of the student's on-campus employment eligibility
- F-1 student does not need an employment card or additional immigration documents - aside from a valid I-20 form - for employment eligibility (although will need more for I-9 form)

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I-20 form (page 1) for F-1 students

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F-1 Students

- Curricular Practical Training (CPT)
 - During course of study, DSO can authorize up to one year of employment in the field of study (it must be an "integral part of an established curriculum"), usually in increments of several months at a time (during the semester, over the summer)
 - No need for authorization from USCIS or employment card
 - I-20 form **MUST** be endorsed by DSO on page 3, indicating length of authorized CPT and specific employer
 - If F-1 student uses full twelve months (aggregate) of CPT, then he/she is not eligible for Optional Practical Training (OPT) post-graduation
 - Part-time CPT does not count towards 12 month total

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Page 3 of I-20 with CPT Authorization

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F-1 Students

- Optional Practical Training (OPT)
 - After completion of degree program, DSO can endorse I-20 form for student to receive up to one year (or more) of employment authorization from USCIS
 - STEM graduates can receive additional 17 months after initial 12 months
 - DSO can also authorize pre-completion OPT in certain circumstances
 - Student must apply (and pay) for and receive an employment authorization card from USCIS, commonly called an EAD or EAC
 - Employment must be in student's field of study!
 - Student needs to have physical card in-hand to **start** OPT employment. If I-20 expires, must stop employment until OPT card arrives & is valid
 - If STEM OPT EAD/EAC card expires, F-1 student can still work as long as he/she can prove that the extension was filed before card expired
 - No extension or card renewal after 29 months of EAD/EAC validity for STEM students, or 12 months for non-STEM students

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F-1 I-20 with OPT Authorization

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OPT card

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M-1 Students

- Students in vocational or nonacademic institutions, other than language training programs
- No employment allowed except for practical training
 - Only available after completion of course of study
 - Employment must be related to field of study
 - DSO must certify that based on information and belief, similar employment is not available in the home/residence country
 - Must get EAD/EAC from USCIS before can start to work
 - Practical training limited to no more than 6 months aggregate
 - Spouse and children cannot work

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Other Employment Options

- EADs/EACs also available to people in the following classifications or situations (not an exhaustive list):
 - J-2 (spouse of J-1 exchange visitor)
 - L-2 (spouse of L-1 intracompany transferee employee)
 - E-1/2/3 (spouse of E-1, E-2, E-3 workers)
 - Adjustment of status applicant
 - TPS (Temporary Protected Status)
 - Asylees and Refugees – not required to have card
 - DACA (Deferred Action for Childhood Arrivals) recipient

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Pop Quiz!

- People from certain select countries do not need to get an entry visa to enter the U.S. as a visitor for business or pleasure.
 - True or False?



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Visitors: B-1/2, Visa Waiver (ESTA)

- **B-1/2, VW/ESTA Visitor CANNOT be put on institution's payroll!**
- Activity in U.S. must benefit visitor or a foreign entity; cannot only benefit U.S. institution
- Allowable activities: business meetings; brief training sessions; scientific, educational, professional/business seminars or conferences; independent research; collaborative efforts in which at least 50% or more of the benefit accrues to visitor
- **Not a way to get around the longer employment visa process (such as H-1B) or J-1 exchange visitor process**
 - Length of visit doesn't determine appropriate visa classification, activities in the U.S. do!

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Visitors: B-1/2, Visa Waiver (ESTA)

- Visa Waiver: same general idea as B status, but no need to go to Embassy/Consulate to get a visa stamp
- 38 participating countries, mostly European and Pacific Rim
- 90 day maximum period of stay, no extensions or changes of status to different classifications
- If violate terms, permanently barred from using program
- Must register and obtain travel clearance via online Electronic System for Travel Authorization (ESTA) before boarding plane (<https://esta.cbp.dhs.gov/>)

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Working from Home

- Can a non-work authorized person (e.g., H-4 spouse) work from home in the U.S. for a foreign employer?
 - Maybe NO: any income from services performed while in the U.S. is still deemed "U.S. source income" (with certain exceptions), and in non-work authorized status, USCIS generally doesn't allow it
 - Maybe YES: because no employment is being taken away (no U.S. workers harmed) by this type of work
 - No specific answer from USCIS; person must determine whether it is worth the risk, especially since permanent residence could be at stake in a worse-case scenario

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Permanent Immigrant Classifications

and Related Employment Eligibility

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Pop Quiz!

- The permanent residence (or “green card”) process takes 6 months for most foreign nationals.
 - True or False?



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Employment-based Green Cards

- Employment-based permanent residence (PR, or green card) process requires Form I-140 Immigrant Petition for Alien Worker
 - Filing of I-140 petition with USCIS does not in itself give worker any legal status or work authorization
 - At this stage of PR process, worker must still have some other underlying status and ability to work (if working in the U.S.), such as H-1B status

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Employment-based Green Cards

- Last step in the process: Form I-485 Application to Adjust Status (in the U.S.)
 - Sometimes can be filed concurrently with I-140 petition
 - Can concurrently (or later) file I-765, Application for Employment Authorization, to receive EAD/EAC employment document
 - Once person has received EAD/EAC, can work in the U.S. in any type of job based on that card, although it is time limited
 - Once person receives Permanent Resident Card (or “green card”), can work in the U.S. indefinitely with no restrictions
 - The card will have a 10 year expiration date, but the PR status does not expire - the card just needs to be renewed

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PR-based EAD/EAC and AP



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PR-based EAD/EAC only



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Permanent Resident Card

Permanent Resident Card (Form I-551)

On May 11, 2010, USCIS began issuing the newly re-designed Permanent Resident Card, also known as the Green Card, which is now green in keeping with its long-standing nickname. The card is personalized with the bearer's photo, name, USCIS number, alien registration number, date of birth, and laser-engraved fingerprint, as well as the card expiration date.

Note that on the new card, shown below, the lawful permanent resident's alien registration number, commonly known as the A number, is found under the USCIS # heading. The A number is also located on the back of the card.

Current Permanent Resident Card (Form I-551) front and back

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Contact Information

- Jill Blitstein, JD (licensed only in Illinois)
- International Employment Manager, NC State University
- 919-515-4518
- Jill_blitstein@ncsu.edu
- http://www.ncsu.edu/human_resources/intemployment/#Home

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Questions?

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Foreign National Payment & Taxation Basics

October 8th, 2014

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Disclaimer

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Presenters

Jennifer Pacheco
Foreign National Tax Compliance Program
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Training Objectives

- Become familiar with “*nonresident alien*” **tax rules**, and learn what a “*nonresident alien*” means for **tax purposes**
- Learn the difference between **immigration** and **tax** status, and how these two must work together
- Become familiar with the various types of **taxable compensations** that can legally be paid to a foreign national
- Begin to understand what the **required documentation** is to process payments for foreign nationals and determination of **source of income** and any **exceptions** to taxation

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Training Agenda



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Question

Failure to follow taxation regulations that are applicable to Foreign Nationals only affects the employee?

True or False?

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Chapter 3 Withholding

- **Internal Revenue Code 1441 to 1443**
 - Governs withholding on payments of U.S. Source income to foreign persons
 - Provides for the statutory tax rate of 30%
- **IRC Section 1461**
 - The withholding agent will be liable for a tax amount resulting from failing to withhold or deposit amounts subject to NRA withholding
 - Both the withholding agent and the foreign recipient may be held liable for such tax, applicable interest and any penalties resulting from a withholding failure.
- **IRS Publication 515**
 - Directions for the withholding agent
 - Specifically, describes:
 - ❖ persons responsible for withholding (withholding agent)
 - ❖ the types of income subject to withholding, and
 - ❖ the information return and tax return filing obligations of withholding agents

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Impact of Chapter 3 Withholding

- **Withholding Agent**
 - A U.S. or foreign person that has control, receipt, custody, disposal, or payment of any item of income of a foreign person that is subject to withholding
 - Liable for taxes owed
- **Foreign National**
 - An individual that owes allegiance to or who is under the protection of a country other than the United States
 - Nonresident Alien
 - Resident Alien

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The Withholding Agent – Per the IRS

- **Potential civil penalties that withholding agents face:**
 - 100% penalty – total amount of tax evaded
 - 20% accuracy-related penalty on the under withheld taxes – negligence
 - 75% penalty for the underpayment of withheld taxes – civil fraud
 - 15%-25% additional taxes for the failure to file a return – negligence
 - 15%-75% additional taxes for the failure to file a return - fraudulent

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Example of Penalties

Payment \$838			
Independent Personal Services	30%	\$ 251.40	Original Taxes Owed
	20%	\$ 50.28	Penalty on underpaid taxes
	75%	\$ 188.55	Penalty in the case of fraud
	25%	\$ 62.85	For not putting it on your 1042 filing
	75%	\$ 188.55	Penalty in the case of fraud for 1042 filing
		\$ 741.63	Taxes and Penalties
		\$ 838.00	Original Payment
		\$1,579.63	Now your payment has almost doubled

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Question

Presence in the United States provides a foreign national the ability to be employed?

True or False?

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Governments Regulating Foreign Nationals

- **Department of Homeland Security (DHS)**
 - United States Citizenship and Immigration services (USCIS)
 - Immigration and Customs Enforcement (ICE)
 - Customs and Border Protection (CBP)
- **Department of Labor (DOL)**
 - Prevailing Wage
 - Foreign Labor Certification Process
 - Fair Labor Standards Act
- **Department of State (DOS)**
 - Travel Visas
 - Permanent Residence
- **Internal Revenue Services (IRS)**
 - Federal Taxation
- **Department of Revenue (DOR)**
 - State Taxation

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Immigration vs. Taxation Terms

<u>Immigration</u>	<u>Taxation</u>
➤ United States Citizens	➤ United States Citizens
➤ Lawful Permanent Resident	➤ Lawful Permanent Resident
➤ Foreign National	➤ Nonresident Alien for Tax Purposes OR ➤ Resident Alien For Tax Purposes

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Nonresident Alien vs. Resident Alien

- **Nonresident Alien for Tax Purposes**
 - Not U.S. citizens, Permanent Residents, or Resident Aliens
 - Does not pass the Substantial Presence Test (SPT)
 - Different tax system from U.S. Citizens or Resident Aliens
- **Resident Alien for Tax Purposes**
 - Means something **different** to IRS than USCIS
 - Passes the Substantial Presence Test (SPT)
 - Similar tax system as U.S. Citizens

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Nonresident Alien vs. Resident Alien (cont.)

- **Substantial Presence Test (SPT)**
 - Physically **presence** in the U.S.:
 - 31 or more U.S. days in the calendar year
 - 183 – days based on the formula (includes partial days)
 - All days in the calendar year
 - 1/3 of U.S. days in the prior calendar year
 - 1/6 of U.S. days in the 2nd preceding calendar year
 - Examples of statuses **exempt** from counting days (given no prior history)
 - F-1 & J-1 Students Visa type – 5 years
 - All other J Visa type – 2 years

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Process Foreign Nationals

- **Special set of Work Restrictions and Tax Guidelines**
 - Foreign Nationals **MUST** have the Appropriate Work Authorization (including self-employment)
 - Work Authorization is linked to Immigration Status
- **Ensure Appropriate Documents are Received**
- **Provide Necessary Communication to Foreign Nationals**
- **COMPLIANCE ISSUES/RISKS:**
 - Large Penalties and Fines
 - Violation of the Foreign National's Visa Status
 - Potentially Jeopardizes Funding

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Factors of Payment

- **Who is the Beneficial Owner of the Income**
 - No assignments
 - Determine Cash Value for "In-Kind" items
- **Payments to Foreign Performers**
 - Agent for the Foreign National – CWA Required for Tax Exemption
- **Source**
 - U.S. Source
 - Foreign Source
- **Who is eligible to perform services?**
- **Substantial Presence Test (SPT)**
 - Nonresident Alien
 - Resident Alien

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Types of Payments

- **Dependent Personal Services:** Wages, Service Related Scholarship/Fellowship/Assistantship Payments, Travel Grants (Reimbursements)
- **Independent Personal Services:** Consulting Fees, Honorariums (Guest Speaker), etc.
- **Scholarship/Fellowships:** Qualified/Nonqualified
- **Other Income Types:** Prizes, Awards, Royalties, etc.
- **Gift Cards** = Cash (one of the above)
- **Stipends** = One of the above

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Examples of General Purchases

- **Goods from a Foreign Entity**
 - No withholding/reporting required
 - Foreign Source
- **Services performed outside the U.S.**
 - No withholding/reporting required, in most cases
 - Document, Document, Document!
 - Foreign Source
- **Services performed within the U.S.**
 - Taxable at federal 30%, unless treaty exist
 - Taxable at state rate, (NC-4%) unless treaty exist
 - Independent Personal Services or Employment
 - U.S. Source
- **Royalties used in the U.S.**
 - Copyrights and Customized Software
 - Taxable at federal 30%, unless treaty exist
 - U.S. Source

Potential exceptions may exist.

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Source of the Income

Type of Income	Sourcing
Personal Services	Where Performed
Dividends	Where Incorporated
Interest	Residence of Payer
Rentals	Where Property is Located
Royalties - Patents/Copyrights	Where Property is Used
Royalties - Natural Resources	Where Property is Located
Scholarship, Fellowship Grants	Residence of Payer
Pensions	Where Services Were Performed, Rev. Proc. 2004-37

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Documentation

- **Foreign National Information Form (FNIF)**
 - Completed by each foreign national
 - Original documents should be presented by the foreign national
 - Copies of documents should be maintained to support FNIF and provide the ability for a reviewer to ensure processing is correct
- **Processing data determines**
 - Eligibility for payments dependent on visa type
 - Substantial Presence Test –
 - > Tax status as Nonresident Alien or Resident Alien

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Processing Documentation

- Publication 515 – **Presumption Rules**, “if you cannot reliably associate a payment with valid documentation you must apply certain presumption rules or you may be liable for tax, interest, and penalties”
- Better to tax and have those taxes refunded by the IRS to the individual, than to not tax at all and face penalties and fines.



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Processing Documentation (cont.)

- **Treaty Benefit Eligibility and Payments to NRAs**
 - The U.S. has treaties with over 60 countries around the world affecting payments to foreign nationals
 - Offer tax exemptions within the U.S. for foreign nationals who were or are tax residents (not citizens) of a treaty country and meet specific criteria

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Processing Documentation (cont.)

- **Considerations When Granting Treaty Benefits**
 - U.S. tax status: NRA or RA
 - **Provide U.S. Social Security Number or ITIN**
 - **Country of tax residency**
 - Primary purpose of visit
 - Status of the organization (educational, research, medical, etc.)
 - Type of Income Paid
 - Form 8233 must be filed with the IRS
 - > 5 days of acceptance
 - > 10 day waiting period for rejection
 - Form W-8 maintain in institution files
 - > Determines whether tax treaty has been requested

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Processing Documentation (cont.)

- **Considerations When Granting Treaty Benefits**
 - **Benefit Limitations**
 - Retroactive Loss of Benefits
 - Prospective Loss of Benefits
 - One-Time Use
 - **Requirement to Re-establish Residency**
 - Back-to-back Rule
 - Combine Benefit Period
 - **Saving Clause and Exceptions**

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Summary of Tax Status

U.S. Citizens or Resident Aliens <ul style="list-style-type: none"> • Tax on Worldwide Income <ul style="list-style-type: none"> – Entities org. under U.S. laws • W-4/W-2 <ul style="list-style-type: none"> – Standard Wage Withholding • W-9/1099 <ul style="list-style-type: none"> – 28% backup withholding – \$600 threshold for most reporting • No treaty benefits (some exceptions) • Filing deadlines <ul style="list-style-type: none"> – Payees: W-2/1099: 1/31 – IRS: 2/28-4/30 	Nonresident Aliens <ul style="list-style-type: none"> • Tax on U.S. Source Income <ul style="list-style-type: none"> – Not org. under U.S. laws • W-4/W-2 <ul style="list-style-type: none"> – NRA Tax Rate • W-8s/8233/1042-S <ul style="list-style-type: none"> – 30% withholding (14% on Scholarships) – State Taxes (NC 4% > \$1500) – No minimum dollar threshold for payments • Claim treaty benefits or ECI to reduce U.S. taxation/withholding if qualify • Filing deadlines <ul style="list-style-type: none"> – Payees: (1042: 3/15) (W-2: 1/31) – IRS: 3/15-4/14
--	---

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Qualified vs. Non-Qualified Scholarships

- **Qualified**
 - Include – tuition, required fees, books, supplies and equipment
 - Non-reportable/ Non-taxable if:
 - A degree candidate,
 - In F, J, M or Q immigration status **and**
 - Undergraduate/graduate student at a college/university
- **Non-Qualified**
 - All other scholarship payments not included above
 - Statutory Rate – 14% with/without U.S. SSN/ITIN

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Publication 970

Table 1-1. Tax Treatment of Scholarship and Fellowship Payments¹
Do not rely on this table alone. Refer to the text for complete details.

If you use the payment for...	AND you are...		THEN your payment is...	
	A degree candidate	Not a degree candidate	Tax free ²	Taxable
Tuition	X		X	
Fees	X		X ³	
Books	X		X ³	
Supplies	X		X ³	
Equipment	X		X ³	
Room	X			X
Board	X			X
Travel	X			X

¹ Does not include payments received for past, present, or future services.
² Payments used for any expenses included in this column are tax free only if the name of the scholarship or fellowship on not prohibit the expense.
³ If required of all students in the course.

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Honoraria– Definition

The law states
 "(q) Any alien admitted under section 101(a)(15)(B) may accept an honorarium [payment and associated incidental expenses for a **usual academic activity or activities (lasting not longer than 9 days at any single institution)**] as defined by the Attorney General in consultation with the Secretary of Education **if such payment is offered by an institution or organization described in subsection (p)(1)** and is made for services conducted for the benefit of that institution or entity and **if the alien has not accepted such payment or expenses from more than 5 institutions or organizations in the previous 6-month period.**"

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Honorarium Rules

Honorarium vs. Contracted Services

- **9/5/6 Rule:**
 - Visitor is limited to 9 days presence at an institutions
 - Visitor cannot have visited more than 5 institutions in the past 6 months
- **Visa Type:**
 - B visa (preferably B-1, not B-2), or
 - VW national (Visa Waiver program)
 - Any other type of visa – **must** determine if permitted to pay
- **Who is allowed to pay honorariums** (subsection (p)(1)):
 - The Payer is one of the below:
 - Institution of Higher Education;
 - Related or Affiliated Nonprofit Entity;
 - Nonprofit Research Organization;
 - Government Research Organization

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Honorarium Rules (cont.)

- **Payments characterized as gratuities**
 - Tokens of Appreciation
- **Per USCIS:**
 - “for services conducted **for the benefit** of that institution or entity”
- **Tax analysis focuses on whether payment would be made but for services rendered**
 - Service required = **compensation**
 - Payee’s U.S. Tax Residency is important
 - Subject to a 30% federal tax withholding rate
 - State Withholding (NC – 4%)
 - Treaty Benefit – with U.S. SSN or ITIN

Services Required = Compensation ≠ Honorariums


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Other Interesting Situations

- **Filing Fees – Taxable Income**
 - As your institution is filing fees for dependents of your institution you may be incurring taxable income for those dependents, which you will need to include on the 1042s
- **Accountable Plan or NOT?**
 - “Accountable Plan” Rules ONLY apply when there is a compensatory relationship
 - “Accountable Plan” Rules DO NOT apply if there isn’t compensatory (employment/independent contractor) relationship

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WHEN Tax Deposits MUST be Made:



Amount of Deposit (Withholding)	IRS Deposit Requirements
Less than \$200	Annually with 1042T filing (Due March 15)
Between \$200 and Less than \$2,000	Within 15 days after the end of the month
\$2,000 or greater	Within 3 banking days

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Two Types of Policies

- **High-level Policies**
 - Define institution’s commitment toward compliance:
 - Complying with:
 - > Internal Revenue Services
 - > State/Local Regulations
 - > Immigration
- **Internal Operational Policies**
 - Day-to-day implementation policies
 - How to process most frequent payment types
 - Forms
 - Checklist
 - Process Flow


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HOW to Be Successful

- **Communication**
 - Ensure your departments keep you in the loop!!!!
- **Are you ready for an IRS or USCIS Audit!!!!**
 - **Scope**
 - Written Policies and Procedures
 - Training for staff
 - Self review/audit
 - **Process Flow**
 - Who is the Primary Contact(s) for each area
 - Who will process documentation and how will it flow for processing
 - Do you have an adequate filing/documentation system
 - Determination of withholding and reporting prior to services being performed and payments

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Questions?



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Tax Assessments 101

October 8th, 2014

Disclaimer

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Presenters

Michelle Anderson

Foreign National Tax Program Manager
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Foreign National Tax Compliance Program
Office of State Controller

Purpose of A Tax Assessment

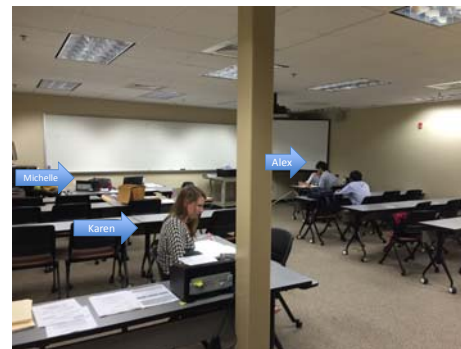
It's how you gather information to comply with various government agencies' rules and regulations.

- Validate Immigration Status
- Validate Employment Eligibility
- Collect Immigration History
- Determine Tax Status
- Determine Country of Tax Residency
- Collect Tax Documents
- Create The Audit File

Question

If the IRS showed up at your campus how confident are you that your institution would pass the audit when it comes to nonresident alien taxation?

1. Completely Confident
2. Somewhat Confident
3. Not Confident
4. Oh please do not come to our campus!



Three Types of Tax Assessments

- **Employment**
 - (Students, Scholars, Researchers, and Professors)
- **Independent Personal Services**
 - (Honoraria, Professional Artists and Athletes)
- **Vendor Payments**
 - (Rents, Royalties, Goods, Contracted Services)

Pre Tax Assessment Questions to Ask Department

- Who are you paying?
- What are you paying?
- Funding source of income?
- How is it being paid?
 - HR System
 - Student Financials
 - Accounting

At NCSU: Information Owners

<p>Visa Issuing Offices</p> <ul style="list-style-type: none"> • OIS (Office of International Services) <ul style="list-style-type: none"> – F-1 and J-1 • GTI (Global Training Initiative) <ul style="list-style-type: none"> – J-1 Student Interns, J-1 Non-degree Students, other J-1 categories • IET (International Employment and Taxation) <ul style="list-style-type: none"> – H-1B, TN, O-1, E-3 	<p>Payment Issuing Offices</p> <ul style="list-style-type: none"> • Human Resources <ul style="list-style-type: none"> – Employment Income • Student Financial <ul style="list-style-type: none"> – Scholarship Payments • Accounting <ul style="list-style-type: none"> – Honoraria, Travel, Vendor Payments, and Awards
---	---

Step 1 Collect Foreign National Information Form

What does the FNIF collect? (Employees and Independent Personal Services)

- Current Immigration Information
- Past Immigration Information
- Job or Payment Information
- Country of Origin
- Country of Tax Residency Information
- Purpose of Visit
- Source of Income
- Type of Income
- SSN or ITIN

FNIF FORM (Example Page 1)

NC STATE UNIVERSITY Foreign National Information Form

Section 1 - If you have been in the US prior to your arrival at NC State you must provide the following information. "Date of Entry" is your first day in the US on that visa. "Date of Exit" is the last day in the US on that Visa. Use date format MM/DD/YYYY

Date of Entry	Date of Exit	Visa Type	Subtype (if one J-1 Visa)	Primary Activity of Visa	Did you use treaty benefits?
Mar 24, 2013	Mar 31, 2013	B1/B2	N/A	TOURISM	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Jun 12, 2012	Jun 19, 2012	B1/B2	N/A	TOURISM	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Mar 30, 2012	Apr 8, 2012	B1/B2	N/A	TOURISM	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Jul 10, 2010	Jul 19, 2010	B1/B2	N/A	TOURISM	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
May 17, 2009	Jun 1, 2009	B1/B2	N/A	TOURISM	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Section 2 - If you have lived in another country in the last five years, prior to coming to the US, your country of tax residence may be different from your foreign residency address.

Country of residence: _____
 If yes, what: _____

FNIF FORM (Example Page 2)

NC STATE UNIVERSITY Foreign National Information Form

Section 1 - If you have been in the US prior to your arrival at NC State you must provide the following information. "Date of Entry" is your first day in the US on that visa. "Date of Exit" is the last day in the US on that Visa. Use date format MM/DD/YYYY

Date of Entry	Date of Exit	Visa Type	Subtype (if one J-1 Visa)	Primary Activity of Visa	Did you use treaty benefits?
Mar 24, 2013	Mar 31, 2013	B1/B2	N/A	TOURISM	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Jun 12, 2012	Jun 19, 2012	B1/B2	N/A	TOURISM	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Mar 30, 2012	Apr 8, 2012	B1/B2	N/A	TOURISM	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Jul 10, 2010	Jul 19, 2010	B1/B2	N/A	TOURISM	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
May 17, 2009	Jun 1, 2009	B1/B2	N/A	TOURISM	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Section 2 - If you have lived in another country in the last five years, prior to coming to the US, your country of tax residence may be different from your foreign residency address.

Country of residence: _____
 If yes, what: _____

Step 2
Collect Immigration Documentation

- Passport (Extension Page?)
- Current Visa
- Past Visas
- Approval Notices (Past and Current)
- I-94 Stamps in Passport
 - Why? Validates Immigration History listed on the FNIF?
 - Does the history match?
- Current I-94 card or I-94 Page
 - Validates the tax assessment (NRA or RA)

See binder for more details

Passport Example

Annotations on the passport data page:
 - Place of Birth: AUSTRALIA
 - Issuing Post: BANGALORE

VISA Example

Annotations on the visa:
 - Issuing Post Name: CHENNAI (MADRAS)
 - ASTL
 - NORTH CAROLINA STATE UNIVERSITY
 - RALEIGH, NORTH CAROLINA 27695-7222

Approval Notice Example

U.S. Department of Justice Form I-551 (Approval Notice). Handwritten annotations: F1, 015.

I-94 Stamp in Passport

Close-up of an I-94 stamp in a passport. Date stamp: JUL 20 2011.

I-94 Example

U.S. Customs and Border Protection I-94 form. Fields include: Admission (I-94) Record Number, Most Recent Date of Entry, Class of Admission, Admit Until Date, and Details provided on the I-94 information form.

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Employment Assessment

During the tax assessment it is a good time to also validate employment status.

- Are they eligible to work?
- Are they eligible to do the employment being hired for?
 - OPT/CPT restrictions
 - J-1 work restrictions
- Is funding listed on the I-20 or DS-2019?
 - New Assistantship
 - New Scholarship
 - Funding source changing?
- Does what being paid meet FLSA (Fair Labor Standards Act) requirements?
 - Fair Wage Requirements

Remember IRS, USCIS, DOL, (which includes the enforcement of FLSA), all have different requirements. (And often contradict one another).

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Scholarship Assessment

- Scholarship Assessment have the same steps as an Employment Assessment
- Is tax liability subject to:
 - 14%,
 - 30%
 - Treaty Eligible

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Vendor Assessment

- **Are you paying:**
 - An Individual
 - An Entity
 - Group
 - Company?
- **Are you paying for:**
 - Goods
 - Services?
- **Are you paying for dependent or independent personal services?**
 - Independent Contractor
 - Recommend using IRS checklist

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Step 3 Assessing Tax Status

- NRA or RA
- Tax Responsibility-
 - Payor or Payee
- Treaty Eligibility
- Treaty Limitations
 - Loss Clauses
 - Limitations
- Collect Appropriate Tax Documents
- Go over **“Reminder Sheet”**
 - Employees and Scholarships

Does everything add up?

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Tax Documents

Nonresident Alien

- W-4
- NC-4 (State Tax Form)
- W-8
- 8233 or W-8BEN

Resident Alien

- W-4
- NC-4 (State Tax Form)
- W-9

See binder for more details

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Reminder Sheet

Foreign National Tax Information Sheet

You are in International Student Status.

Federal (FED) Withholding: Appropriate to pay.	Social Security (OASDI): Not required to pay.
State (NC) Withholding: Appropriate to pay.	Medicare (MED): Not required to pay.

Treaty Benefits: _____

It is your responsibility to review your treaty for January 2015.

Treaty Reminders

It is mandatory to update the following information with this office:

- Changes in address
- Changes in Passport or Visa status
- Changes with I-20, OPT, CPT, or DS-2019
- Changes in job status or position (includes scholarships, fellowships, assistantship changes, OPT, CPT, and travel reimbursements)
- Changes in income

You can do all of the above via e-mail: InternationalStudent@ncsu.edu

Don't forget to apply for your Social Security Card. You must apply for a Social Security number within 90 days of employment.

According to the Code of Federal Regulations, employment for F-1 Students must not exceed 20 hours a week while school is in session.

Please consent to receive an electronic W-2. You can do this through MyPack Portal in Employee Self Service or Payroll and Compensation - W-2/999 Contact. In January 2015, you will be able to print this form directly from MyPack Portal.

For more information on practice, employee self service, and dead droped go to: http://www.ncsu.edu/human_resources/payroll/foreign_nationals.php

Useful links for tax information:

<http://www.irs.gov/pub/irs-soi/1314soi.pdf> (Tax rates/tables page 54)

<http://www.irs.gov/efile>

I have read and understand the terms and conditions explained above, and my signature here reflects that I have a personal responsibility to file my federal and state tax returns on my own, whether or not I am currently in the United States. I must inform IET personally via e-mail about any and all new, changed, or updated documentation that I receive.

Signature: _____ Date: _____

**Step 4
Final Analysis**

- Does Everything Add Up?
- Does requested payment match visa restrictions?
- Do we have everything documented?
- Do we have all immigration and tax documents?
- Do we need to follow up for an ITIN, SSN, or missing immigration documentation?
- Do I need to fax or mail the tax treaty?
- Do we have everything for an audit?

Audit File Checklist

NC STATE UNIVERSITY International Employment and Taxation

F-1 Initial List (All documents signed and dated)

FNIE

- Dual citizenship
- Country of tax residence
- First time in US (Page 2, if applicable)
- Receiving any other funding from the university (yes / no)
 - Current Passport (extension page, if applicable)
 - Visas (all U.S. visas in passport and supporting documentation)
 - I-20
 - I-94 Card

Windstar Screens

_____ Basic Info (including SSN)	_____ Country Info
_____ Personal Info	_____ Default Income
_____ US Address	_____ Immigration Details
_____ Foreign Address	

Windstar Documents

- _____ W-4
- _____ NC-4
- _____ W-8BEN or W-9
- _____ Analysis Summary
- _____ Treaty Documents (if applicable)

Update in PeopleSoft **Prior to filing**

_____ Federal Tax Panel	_____ SSN copy to be entered in PeopleSoft
_____ State Tax Panel	
_____ FICA Override	
_____ Scholarship (if applicable)	

Notes:

Tax Audit-File Example

- Checklist
- Audit Examples
- Documenting Thought Process
- Document when you deny tax treaty
- Assessing the situation

Questions?



Included in your binder is detailed tax documentation per visa type to use as a future resource.

Thank you!

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Internal Revenue Service

Overview of FATCA, Tax Withholding
for Nonresident Aliens, ITINs, and
Compliance Issues of Foreign
Students

Presenter

Tracy McFee
International Technical Specialist
Internal Revenue Service



2


Learn to Speak IRS

- **RA** = Resident Alien
- **NRA** = Nonresident Alien
- **FC/FE** = Foreign Corporation/Foreign Entity
- **ECI** = Effectively Connected Income
- **FDAP** = Fixed Determinable Annual Periodic
- **W/H or ITW** = Withholding or Income Tax Withholding
- **ITIN** = Income Tax Identification Number
- **FIRPTA** = Foreign Investment Real Property Tax
- **FATCA** = Foreign Account Tax Compliance Act
- **FFI** = Foreign Financial Institution
- **IRC** = Internal Revenue Code
- **"We" or "Us"** = United States




Objectives

- Provide a basic overview of FATCA provisions
- Discuss tax withholding of Nonresident Aliens under IRC § § 1441 - 1443
- Describe recent changes to Form W-8BEN
- Discuss the process for issuing ITINS and recent changes
- Discuss some compliance issues relating to foreign students
- Share information on some new resources




**Foreign Account Tax
Compliance Act (FATCA)
Overview**



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What is FATCA?


- Foreign Accounts Tax Compliance Act
- Created as part of HIRE Act in 2010
- Introduces an information reporting regime for Foreign Financial Institutions (FFI) to report on financial accounts held by US taxpayers or entities in which a US taxpayer has a substantial ownership interest
- Also introduces a new information reporting requirement for US taxpayers (Form 8938)



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FATCA Details for Individuals

- U.S. citizens, U.S. individual residents, and a very limited number of nonresident individuals who own certain foreign financial accounts or other specified foreign financial assets must report those assets
- Use Form 8938, Statement of Specified Foreign Financial Assets, to report these assets
- Attach Form 8938 to the annual income tax return (usually Form 1040)
- Taxpayers with a total value of specified foreign financial assets below a certain threshold do not have to file Form 8938

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A few more details...


- If the total value is at or below \$50,000 at the end of the tax year, there is no reporting requirement for the year, unless the total value was more than \$75,000 at any time during the tax year
- The threshold is higher for individuals who live outside the United States
- Thresholds are different for married and single taxpayers
- Taxpayers who do not have to file an income tax return for the tax year do not have to file Form 8938, regardless of the value of their specified foreign financial assets
- Penalties apply for failure to file accurately

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Summary of Key FATCA Dates

Key Dates	Description
Jan. 1, 2012 *	IRS began accepting Form 8938 (Statement of Specified Foreign Financial Assets)
August 19, 2013**	IRS will open the online FATCA Registration process for Financial Institutions to register with the IRS
April 25, 2014	FIs and Sponsoring Entities must complete registration by this date to ensure inclusion on the initial IRS FFI list. GIINs will also be assigned to financial institutions no later than this date
June 2, 2014	Initial IRS FFI list to be published by the IRS on this date; IRS intends to update this list monthly
July 1, 2014	Withholding begins on U.S. FDAP payments to FIs, nonfinancial foreign entities (NFFE), and account holders of participating FIs
Mar. 15, 2015 (no later than)	FIs and Sponsoring Entities to file the first information reports with respect to the 2014 calendar year
Mar. 31, 2015 (no later than)	FIs and U.S. withholding agents to file Form 1042-S with respect to withholding during the 2014 calendar year. In certain cases, U.S. withholding agents may have a reporting obligation with respect to payments made to U.S. owned NFFEs
Jan. 1, 2017 (no earlier than)	Withholding on foreign passthru payments and gross proceeds from sales or dispositions of property begins no earlier than Jan 1, 2017

*Currently, only individuals are required to complete Form 8938. Certain domestic trusts and certain closely-held domestic corporations and partnerships are not required to file Form 8938 until the IRS issues final domestic entity reporting regulations.
**Paper registration through Form 8957 "Foreign Account Tax Compliance Act (FATCA) Registration" will also be available.

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More Information

❖ www.irs.gov/fatca

- Regulations
- Drafts of Forms
- FAQs
- FATCA Listserve
- Other Guidance

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**IRC § § 1441 to 1443 –
Income and Exemptions
Including FDAP**


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**General Rule – Employment Taxes &
Income Tax Withholding**

FICA, FUTA and income tax withholding (ITW) are imposed on Nonresident Aliens working as employees in the United States, just like U.S. employees irrespective of whether the employer is U.S. or foreign.


Some agreements may affect the tax treatment of an NRA under the general rule:

- Income tax treaties
- Social security totalization agreements
- Other (e.g., consular agreements)

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3 Withholding Regimes

1. IRC § § 1441 to 1443 – Income and Exemptions Including FDAP
2. IRC § 1445 – FIRPTA
3. IRC § 1446 – ECI of Foreign Partners

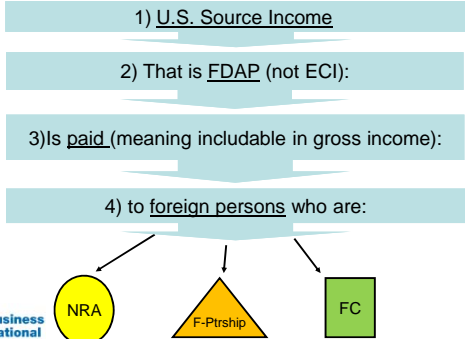


Common Types of FDAP Payments


- Interest
- Dividends
- Rents
- Royalties
- Gambling Winnings
- Scholarships & Grants
- Sales Commissions
- Pensions & Annuities
- Prizes and Awards



When Withholding is Required Under IRC § 1441




```
graph TD; A[1) U.S. Source Income] --> B[2) That is FDAP (not ECI)]; B --> C[3) Is paid (meaning includable in gross income)]; C --> D[4) to foreign persons who are:]; D --> E((NRA)); D --> F[/F-Partship/]; D --> G[FC];
```



Common Exceptions to FDAP W/H


- Rents (IRC § 871(d))
- Compensation for Services (IRC § 871(a)(1))
- Scholarships (Treaty)
- Social Security Benefits (Treaty)
- Portfolio Interest
- Dividends



Other Exceptions to W/H (cont'd)

- Exceptions for Foreign Governments (IRC § 892(a))
- Exception for U.S. Possessions
- Exceptions for International Organizations (IRC § 892(b))
- Exception Tax Exempt Income
 - Tax exempt income State and local government bond interest (IRC § 103)
 - Tax exempt annuities (IRC § 871(f))
- Exception for Interest Income
 - Bank interest (IRC § 871(i))
 - Short term OID obligations (IRC § 871(g))
 - Portfolio Interest (IRC § 871(h))
- Exception for Dividend Income (IRC § 871(i))

For these exceptions, additional documentation would be required




Claiming Lower W/H Treaty Rates

Authority:

- **Treas. Reg. §1.1441-6.** Claim of reduced withholding under an income tax treaty.
- **Treas. Reg. §1.1441-4(b)(2)** Claims of reduced withholding under an income tax treaty in the case of compensation from personal services.

Filing:


- Form 8233
 - Personal Services/ECI
- Form W-8BEN
 - Rents
 - Bank Interest
 - Non-Compensatory Scholarships/Fellowship Grants



W/H Agent Responsibilities


1. Determine the status of the payees
2. Determine proper rate to withhold
3. Deposit the withholding tax
4. File withholding returns

- Withholding agent is personally liable for any tax required to be withheld. Treas. Reg. §1.1441-1(b)(7)
- Penalties and interest may apply for failure to withhold.




Summary of Withholding Statements

- **Form 1042 and 1042-S**
 - **1042**, Annual Withholding Tax Return for U.S. Source Income of Foreign Partners
 - **1042S**, Foreign Person's U.S. Source Income Subject to Withholding
- **Form W-8 Family**
 - **W-8BEN**, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding
 - **W-8ECI**, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected with the Conduct of a Trade or Business in the United States
 - **W-8EXP**, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding
 - **W-8IMY**, Certificate for Foreign Intermediary, Foreign Flow Through Entity, or Certain US Branches for United States Tax Withholding
- **Form 8233** Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of Nonresident Alien Individual.



Form 8233 Exemption from Withholding on Compensation



Form W-8BEN Parts II and III

Part II Claim of Tax Treaty Benefits (for Chapter 3 purposes only) (see instructions)

I certify that the beneficial owner is a resident of _____ within the meaning of the income tax treaty between the United States and that country.
Special rates and conditions (if applicable) (see instructions): The beneficial owner is claiming the provisions of Article _____ of the treaty identified on line 9 above to claim a _____ % rate of withholding on (specify type of income): _____

Part III Certification

I am the individual that is the beneficial owner or am authorized to sign for the individual that is the beneficial owner of all the income to which this form relates or am using this form to document myself as an individual that is an owner or account holder of a foreign financial institution.

- The person named on line 1 of this form is not a U.S. person.
- The income to which this form relates is:
 - (a) not effectively connected with the conduct of a trade or business in the United States,
 - (b) effectively connected but is not subject to tax under an applicable income tax treaty, or
 - (c) the partner's share of a partnership's effectively connected income.
- The person named on line 1 of this form is a resident of the treaty country listed on line 9 of the form (if any) within the meaning of the income tax treaty between the United States and that country, and
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions.

Furthermore, I authorize this form to be provided to any withholding agent that has control, receipt, or custody of the income of which I am the beneficial owner or any withholding agent that can disclose or make payments of the income of which I am the beneficial owner. I agree that I will submit a new form within 90 days if any certification made on this form becomes incorrect.

Sign Here

(Signature of beneficial owner or individual authorized to sign for beneficial owner) _____ Date (MM-DD-YYYY) _____
Print name of signer _____ Capacity in which acting if form is not signed by beneficial owner _____

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Form W-8BEN-E, Certificate of Status of Beneficial Owner of U.S. Tax Withholding and Reporting (entities)

**UPDATED INFORMATION FOR USERS OF FORM W-8BEN-E --
USE OF FORM W-8BEN (REVISION DATE FEBRUARY 2006)
BEFORE JANUARY 1, 2015**

The Form W-8BEN-E reflects changes made by the Foreign Account Tax Compliance Act (FATCA) and is for use by beneficial owners that are entities. Entities also may use the Form W-8BEN (revision date February 2006) through December 31, 2014.

For purposes of chapter 3 of the Internal Revenue Code, a Form W-8BEN (revision date February 2006) provided to a withholding agent by an entity before January 1, 2015 will remain valid until the form's validity expires under Treasury Regulations section 1.1441-1(e) (4)(ii).

For purposes of chapter 4 of the Internal Revenue Code, a Form W-8BEN (revision date February 2006) provided to a withholding agent by an entity before January 1, 2015 is and will remain valid to the extent permitted in Treasury Regulations section 1.1471-3(c)(1) (describing the allowance for use of a "pre-FATCA Form W-8"). See also Treasury Regulations section 1.1471-2T(a)(4)(ii) (describing a transitional exception to withholding for certain payments made with respect to a preexisting obligation).

A withholding agent may request that you provide a Form W-8BEN (revision date February 2006) before January 1, 2015. The Form W-8BEN (revision date February 2006) can be found on its.gov in the Forms and Publications section, under the "Prior Year Forms" tab, by searching the cumulative list of forms posted there for the term "Form W-8". It does not reflect the changes made by FATCA.

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Form W-8BEN-E Part I

Form W-8BEN-E Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)
(February 2014)
Department of the Treasury Internal Revenue Service

Do NOT use this form for:

- U.S. entity or U.S. citizen or resident
- A foreign individual
- A foreign individual or entity claiming that income is effectively connected with the conduct of trade or business within the U.S. (unless claiming treaty benefits)
- A foreign partnership, a foreign simple trust, or a foreign grantor trust (unless claiming treaty benefits) (see instructions for exceptions)
- A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession claiming that income is effectively connected U.S. income or that is claiming the applicability of sections 1152, 501(c), 690, 695, or 1443(b) (unless claiming treaty benefits) (see instructions)
- Any person acting as Jln intermediary

Instead use Form:

- W-9
- W-8BEN (individual)
- W-8ECI
- W-8IMY
- W-8ECI or W-8EXP
- W-8IMY

Part I Identification of Beneficial Owner

1 Name of organization that is the beneficial owner _____ 2 Country of incorporation or organization _____

3 Name of disregarded entity receiving the payment (if applicable) _____

4 Chapter 3 Status (entity type) (Must check one box only):

<input type="checkbox"/> Simple trust	<input type="checkbox"/> Corporation	<input type="checkbox"/> Disregarded entity	<input type="checkbox"/> Partnership
<input type="checkbox"/> Central bank of issue	<input type="checkbox"/> Grantor trust	<input type="checkbox"/> Estate	<input type="checkbox"/> Government
<input type="checkbox"/> Tax-exempt organization	<input type="checkbox"/> Private foundation		

If you entered disregarded entity, partnership, simple trust, or grantor trust above, is the entity a hybrid making a treaty claim? If "Yes" complete Part III. Yes No

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Form W-8BEN-E Part I (Cont.)

5 **Chapter 9 Status (PARTIA status) (Must check one box only unless otherwise indicated)** (See instructions for details and complete the certification below for the entity's applicable status).

Nonparticipating FFI (including a limited FFI) or an FFI related to a reporting FFI (other than a registered deemed-compliant FFI) or participating FFI. Nonreporting SGA FFI (including an FFI treated as a registered deemed-compliant FFI under an applicable Model 2 law). Complete Part XII.

Reporting FFI. Foreign government, government of a U.S. possession, or foreign central bank of issue. Complete Part XIII.

Reporting Model 1 FFI. International organization. Complete Part XIV.

Reporting Model 2 FFI. Exempt retirement plans. Complete Part XV.

Registered deemed-compliant FFI (other than a reporting Model 1 FFI or a registered FFI that has not obtained a GIN). Entity solely owned by exempt beneficial owners. Complete Part XVI.

Sponsoring FFI that has not obtained a GIN. Complete Part IV. Territory financial institution. Complete Part XVII.

Certified deemed-compliant non-reporting local bank. Complete Part V. Nonfinancial group entity. Complete Part XVIII.

Certified deemed-compliant FFI with only low-value accounts. Complete Part VI. Exempted nonfinancial start-up company. Complete Part XIX.

Certified deemed-compliant sponsored, custody held investment vehicle. Complete Part VII. Exempted nonfinancial entity in liquidation or bankruptcy. Complete Part XX.

Certified deemed-compliant sponsored, custody held investment vehicle. Complete Part VIII. S13(b) organization. Complete Part XXI.

Certified deemed-compliant limited liability investment entity. Complete Part VIII. Nonprofit organization. Complete Part XXII.

Certified deemed-compliant investment advisor and investment manager. Complete Part IX. Publicly traded NFFE or NRE filer affiliate of a publicly traded corporation. Complete Part XXIII.

Owner-documented FFI. Complete Part X. Exempted territory NFFE. Complete Part XXIV.

Respective distributor. Complete Part XI. Active NFFE. Complete Part XXV.

Passive NFFE. Complete Part XXVI.

Exempted inter-affiliate FFI. Complete Part XXVII.

Direct reporting NFFE.

Sponsored direct reporting NFFE. Complete Part XXVIII.

6 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address (other than a registered address).
City or town, state or province. Include postal code where appropriate. Country

7 Mailing address (if different from above).
City or town, state or province. Include postal code where appropriate. Country

8 U.S. taxpayer identification number (TIN). If required, see 1. (U.S. TIN) 9 Foreign TIN 10 Reference number(s) (see instructions for reporting Requirements Act notice, see separate instructions). Form **W-8BEN-E** © 2014

Note. Please complete remainder of the form including signing the form in Part XXXX.

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IRS Resources

- **Publication 515 – Withholding of Tax on Non Resident Aliens and Foreign Entities**
- **Publication 519 – U.S. Tax Guide for Aliens**
- **Publication 901 – U.S. Tax Treaties**
- **Publication 15 - (Circular E) Employer's Tax Guide**




Individual Tax Identification Number (ITIN)



ITIN


- What is an ITIN?
 - Nine digit number issued to NRA who is not eligible to obtain SSN.
- Who needs an ITIN?
 - An NRA claiming treaty benefits
 - A NRA not eligible for a SSN who is filing a Form 1040NR
 - A NRA electing to file jointly with spouse who is a U.S. person
 - A RA not eligible for a SSN who has to file
 - An Alien spouse claimed as exemption us is not eligible for SSN
 - An Alien claimed as dependent not eligible for SSN
 - A NRA student, teacher, researcher, etc. not eligible for SSN



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ITIN: Applications

- How to apply
 - Complete Form W-7, Application for IRS ITIN
 - Generally attached to filer's original U.S. income tax return being filed unless an exception is met – see instructions
 - Attach documentation supporting information on Form W-7
 - Original Documents or Certified Copies
 - Exceptions to new documentation requirements
 - U.S. Military spouse/dependents
 - NRAs claiming treaty benefits
 - Student Exchange Visitors Program (SEVP) participants
 - Submit to IRS Taxpayer Assistance Center or mail to -
 - Internal Revenue Service, ITIN Operation, P. O. Box 149342, Austin, TX 78714-9342




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ITIN: Documentation

- What documents are acceptable as proof of identity and foreign status?

<ul style="list-style-type: none"> ▪ Passport ▪ National identification card ▪ U.S. driver's license ▪ Civil birth certificate ▪ Foreign driver's license ▪ U.S. state identification card ▪ Foreign voter's registration card ▪ U.S. military identification card 	<ul style="list-style-type: none"> ▪ Foreign military identification card ▪ Visa ▪ U.S. Citizenship and Immigration Services (USCIS) photo identification ▪ Medical records (dependents only - under 6) ▪ School records (dependents only)
--	---




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ITIN: Submitting an Application		
Applications Submitted to:	Criteria for Document Certification	Applicants Covered
IRS ITIN Operations (Austin)	<ul style="list-style-type: none"> Direct applicant submission by mail Original or copies certified by issuing agency Certify all approved document types	<ul style="list-style-type: none"> Primary Secondary Dependents
Participating IRS Taxpayer Assistance Centers (TACs)	<ul style="list-style-type: none"> In person submission for each applicant Original or copies certified by issuing agency Certify passport and national identification cards only All other original documentation is mailed with W-7 application	<ul style="list-style-type: none"> Primary Secondary Dependents
IRS Tax Attachés (London, Paris, Beijing, Frankfurt)	<ul style="list-style-type: none"> In person submission for each applicant Original or copies certified by issuing agency Certify all approved document types	<ul style="list-style-type: none"> Primary Secondary Dependents
Certifying Acceptance Agents (CAA) including LITC and VITA CAAs	<ul style="list-style-type: none"> In person submission for each applicant Original or copies certified by issuing agency Certify all approved document types Dependent's original documentation or copies certified by the issuing agency is mailed with W-7 application	<ul style="list-style-type: none"> Primary Secondary
Educational Institutions (Colleges, Universities)	<ul style="list-style-type: none"> Follow SEVP approved process issued 10/2/2012 	<ul style="list-style-type: none"> Primary Secondary Dependents


ITIN : Recent Change

- If not used on a federal income tax return for any year during a period of five consecutive years (beg. 01/01/2013)
- If an ITIN expires and is still needed - Resubmit Form W-7 and all required documentation



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Compliance Issues & Resources



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Some Compliance Issues with Foreign Students and Teachers

- Residency Status
- Treaty Exemptions
- Scholarships, Fellowships and Grants
 - Taxable Vs. Tax Free
- Employee Business Expenses
- Education Expenses
- Travel Expenses
- Moving Expenses


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New IRS Resources

- New irs.gov webpages on Taxation of Aliens by Visa Type and Immigration Status
 - <http://www.irs.gov/Individuals/International-Taxpayers/Taxation-of-Aliens-by-VISA-Type-and-Immigration-Status>
- IRS Chief Counsel Advice: Consecutive Claims under Articles 19 and 20 of the U.S. - China Income Tax Treaty
 - <http://www.irs.gov/pub/irs-wd/201438020.pdf>

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Questions?

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NC STATE UNIVERSITY

Best Practices

October 9th, 2014

NC STATE UNIVERSITY

Perception



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The Office of State Controller

- Implemented The Foreign National Tax Compliance Program to provide State government agencies with knowledge of nonresident alien taxation
- Developed standard policies and procedures for each agency to adapt to their needs
- Annually, we develop and implement a full training curriculum, with customized training as needed, to ensure North Carolina is well versed in the ever-changing federal and state rules and regulations
- Established a statewide convenience contract for taxation software, services and resources.

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Building Relationships

NC State University currently has one of the largest foreign national student and scholar populations in the UNC system. Due to the increasing volume of international visitors – 3,000+ foreign national tax assessments/year - NCSU has had to create more efficient ways to identify and process this population to ensure compliance with Federal and multi-state regulations, as follows:

- Designed and implemented specialized fields in PeopleSoft – not just HR, but also the Student Information System.
- Created queries to identify possible tax and immigration compliance issues during payroll processing.

None of this would have not been possible without developing a solid partnership between our International Offices and our Business Offices.

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“Doctrine of the Low Hanging Fruit”

Linda Dodd-Major, Esq.
She is a well respected immigration attorney and former Director of INS' Business Liaison Office

- Heard this presentation for the first time August 2006
- Heard it again November 2006.
- This inspired my mission to break down the silos at my institution.

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Sometimes We Unintentionally Work in Silos

International Office Human Resources Accounting Student Financials



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Deemed to Know

Per IRS Publication 515, "if you cannot reliably associate a payment with valid documentation you must apply certain presumption rules or you may be liable for tax, interest, and penalties. If you comply with the presumption rules you are not liable for tax interest and penalties even if the rate of the withholding that should have been applied based on the payee's actual status is different from that presumed."

Outcome: All departments have equal ownership in compliance responsibilities

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Our Toolbox

- **HR System/ Accounting/ Student Financials (example: PeopleSoft or Banner)**
 - Visa Panel
 - Tax Panel
 - Queries
 - I-9's
- **Office of International Students and Scholars**
 - Building relationships with the groups that sponsor our foreign nationals' visas.
 - Building relationships with your department representatives (HR or Payroll).

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Our Toolbox (cont.)

How can we identify this population?

- **Critical Questions –**

Visa Panel:

- Who updates your visa panels?
- Are you utilizing this panel properly?
- Is the information in this panel accurate?
- Are you tracking data/expiration?

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IRS Recommendation for Identifying Foreign National

- **Address Field**
 - Country – not U.S.A. or Blank
 - State – not a U.S. State or Blank
 - City – Foreign City
 - Zip – not a U.S. pattern – XXXXX-XXXX
- **Foreign Employer I.D. Number**
 - Usually begins with 98-XXXXXXX
- **Foreign ITIN**
 - Usually begins with 999 and 4th digit is a "4" or "7"
- **Foreign Vendor Numbers**
 - Required by accounting system?
 - Do you have a policy for establishing "fake" vendor numbers?

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Open Discussion

Let's Put What We Learned Into Practice

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Scenario 1

- You have been contacted by a department because it would like to pay a F-1 student an award.
- What questions should you ask?
- Is there any tax liability?

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Scenario 2

- You have a J-1 scholar that is coming to your institution to do a presentation. Your institution would like to pay travel expenses.
- What steps do you take?
- Is there any tax liability?

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Scenario 3

- You have a F-1 student that belongs to another institution, but your institution would like to cover her expenses to attend a conference that you are hosting.
- What do you do?
- Is there any tax liability?

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Scenario 4

- You have a student who has recently applied for OPT (Optional Practical Training). He has shown you the third page of his I-20 stating he has applied for OPT.
- Can he begin working?

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Scenario 5

- You have an H-1B worker that is transferring his H-1B from his current employer to your institution.
- When can he begin working?

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Scenario 6

- You have an H-1B worker that will be working at your institution and at a research facility near your campus.
- What are some possible issues?

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Scenario 7

- You have an H-1B worker who that has taught a class and your institution would like to pay him an honoraria and travel expenses.
- What are some questions you should ask?
- Is there any tax liability?

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Scenario 8

- You are sharing a grant with two other institutions. In the grant there are line items to fund scholarships to some of the students involved in the project. The PI (Principal Investigator) of the grant has decided to pay scholarships to three students all from the other institutions named in the grant.
- What do you do?

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Scenario 9

- During a tax assessment with a new student, when examining the DS-2019 you notice that it was not issued by your institution. After doing some research, you find out that your school has a new grant and the organization listed on the DS-2019 is partnering with your institution.
- What are some possible issues?

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Scenario 10

- Your performing arts department has contacted you to let you know that a world famous performer is coming to your institution and you will be paying him \$21,000 for his performance.
- What do you do?

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Scenario 11

- Your institution has hired a foreign company to do some consulting on a project. Your institution has agreed to pay this company \$10,000 for its expertise.
- What do you do?

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Scenario 12

- Your institution has decided to purchase a photograph that will be used in a newsletter from the United Kingdom for \$500.
- What do you do?

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Scenario 13

- Your institution has rented a 3D Educational "ride" from Canada, which includes a mobile simulation theatre constructed inside a pair of 28-foot by 8-foot tractor trailers. The ride also includes a DVD Video Projection System and a Surround Sound System to complete the overall experience. The ride will be rented for 5 years at \$200,000 per year.
- What do you do?

Scenario 14

- A new F-1 student has come to your office to complete her tax assessment. According to her FNIF she is claiming she is from China. Upon examining her visa you noticed it was issued in Hong Kong.
- What are some questions you should ask?
- Is she eligible for tax treaty?

Questions?

Thank you!

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The Affordable Care Act (ACA) and Foreign Nationals

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Disclaimer:

The information presented in this presentation is for information purposes only. This presentation should not be viewed as legal advice. Check with your institution's legal counsel to determine how these laws impact your situation.

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- ### A Summary of the ACA
- Effective January 1, 2014, the individual mandate states that every person must have health insurance. Failure to do so results in a tax penalty-unless exempt from the ACA law
 - Effective January 1, 2015, eligible employers must offer health coverage to eligible employees/workers or face penalties

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The ACA Individual Mandate

- All U.S. citizens living in the United States are subject to the individual shared responsibility provision as are all permanent residents and all foreign nationals who are in the United States long enough during a calendar year to qualify as resident aliens for tax purposes. Foreign nationals who live in the United States for a short enough period that they do not become resident aliens for federal income tax purposes are not subject to the individual shared responsibility payment even though they may have to file a U.S. income tax return.

- NC STATE UNIVERSITY
- ### The ACA Employer Mandate
- Who is Eligible?
- Those who work 30 hours/week for 3 months or more
 - Those who have worked an average of 30 hours or more per week over a "standard measurement period"
 - Applies to **ELIGIBLE** students, employees, temporary workers, etc.

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Affordable Care Act

O N D J F M A M J J A S O N D J F M A M J J

Standard Measurement Period- Oct-Sept ACA Coverage Jan-Dec

Initial Measurement Period – 12 months ACA Coverage Feb-Jan

- **Students**
- **Temps**
- **Part-time faculty**
- **Those Exempted from ACA**
 - **F-1/J-1 students**
 - **J-1 researchers and scholars**
 - **Federal/State Work Study hours**
 - **Seasonal hours**

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ACA and F-1 and J-1 Students

- International students on F-1 or J-1 visas are exempt from the ACA requirements for 5 years while in nonresident alien tax status, though many institutions require health coverage
- J-1 visa participants in the US in non-student categories, (example: teacher/researcher) are exempt from the ACA requirements for coverage for their first 2 years in the US, while in nonresident alien tax status.

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ACA and J-1

- Many international visitors are covered by health insurance plans issued in their home country
- Exchange visitors in J-1 nonimmigrant status and their dependents in J-2 status are required to maintain health insurance as a condition for the J exchange program. These plans may have required coverage that ACA plans do not have
- Other international visitors may purchase health coverage from the Healthcare Exchange-though not a requirement

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ACA: H-1B and Other Foreign Nationals

- Subject to the substantial presence test to determine resident or nonresident alien tax status
- If deemed a resident alien for tax purposes, the ACA law applies and the worker must have health insurance or pay a tax penalty
- An employer health plan may be offered or the ACA Health Care Exchange may be used

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IRS Requirements for Nonresident Alien Tax Status

- In order for nonresident aliens and their dependents not to be subject to the ACA individual mandate fine they must file form 8843.
- All dependents are required to file form 8843.
- Failure to file form 8843 could result in IRS fines and penalties.

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Summary:

The laws around visa requirements now have to overlay on the health insurance requirements of the Affordable Care Act. To comply with these laws it is important to work collaboratively with those with legal knowledge, visa knowledge, benefits knowledge and payroll/tax knowledge.

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Questions?

Thank You!

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Attendees by Last Name (158)

Jim Allen-Duke University
Felicia Amadi-Elizabeth City State University
Terrie Ames-North Carolina Central University
Art Andrews-Wake Technical Community College
Janetta Atwater-NC Central University
Maddy Baer-UNC Charlotte
Dianna Banks-UNC Shared Services Payroll
Carina Barbash-VIF International Education
Debbie Barnette-Davidson College
Elizabeth Barnum-UNC Chapel Hill
Lee Beal-Tri-County Community College
Cherrie Boyce-College of the Albemarle
Nancy Brendell-Western Carolina University
Tammy Britt-UNCP
Nancy Brock-UNC Chapel Hill
Madelene Brooks-Cape Fear Community College
Bridget Brown-East Carolina University
Crescentia Brown-Wake Technical Community College
Susan Caldwell-Davidson College
Toula Capetanos-NC State Govt: OSHR
Courtney Carey-North Carolina A&T State University
Angelina Chevalier-Central Piedmont Community College
Candace Chow-University of Maryland, Baltimore
Elena Cirmizi-George Mason University
Benita Clark-Wake Technical Community College

Elizabeth Clavell-Boston College
JoAnn Clune-Indiana University
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Marci Copeland-East Carolina University
Kelly Cordero-Brunswick Community College
Andrea Cox-UNC Chapel Hill
Carrie Cox-Cabarrus County Schools
Yolonda Crim-Winston Salem State University
Diane Cronin-Boston College
Fred Cundiff-North Carolina A&T State University
Anne Davenport-Wake Forest University
Courtney Davies-Carnegie Mellon University
Eleanor Davis-Cape Fear Community College
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Wendy Dodson-Sandhills Community College
Cori Duck-Old Dominion University
Charlie Ducker-UNC Wilmington
Lisa Eakins-UNC Wilmington
Tarek Elshayeb-UNC Charlotte
Kim Evans-UNC Payroll SSC
Zhenelle Falk-Rensselaer Polytechnic Institute
Joanne Ferguson-UNC-Wilmington
Jen Fernandez-Villa-UNC Wilmington
Jason Forlines-North Carolina Community College System
Rachel Gagliardi-Sandhills Community College
Shelly Gahagans-University of Arkansas, Fayetteville
Sheila Galloway-Brunswick Community College
Sarah Gamer-Georgia Institute of Technology
Thomas Gehrmann-NC State SAMSI Program
Susan Gentry-College of the Albemarle
Cynthia Gilbert-Brown University

Gretchen Gosnell-University of North Carolina Chapel Hill
Martha Greene-Forsyth Technical Community College
Asami Guenther-San Diego State University
Glenda Habeych Randall-University of Maryland
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Megan Hauser-UNC Charlotte
Lisa Hecker-Old Dominion University
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Louise Hewett-Brunswick Community College
Logan Hobbs-University of Virginia
Melissa Hubbard-Arkansas Tech University
Jean Hughes-UNC-Chapel Hill
Frances Hunt-UNC Pembroke
Heather Iannucci-UNC-Wilmington
Andrea Jackson-UNC Asheville
Latoya Jackson-Davidson College
David Jamison-Appalachian State University
Sherri Jenkins-VIF International Education
J. Christopher Jessie-Wake Forest University
Martha Johnson-College of the Albemarle
Kimberly Johnson-Charleston Southern University
David Jones-North Carolina A&T State University
Jessica Jones-Wilson Community College
Marlene Kanipe-The College of Wooster
Michael Kershner-Virginia Tech
John Kirkman-UNC Greensboro
John Kraus-Stetson University
Janet Kunz-Virginia Tech
Jessica Larsen-UNC-Chapel Hill ISSS

Jennifer Leigh-Central Piedmont Community College
Rhonda Linderman-Eastern Michigan University
Brenda Logan-NC Central University
Geri Lyles-University of North Carolina Chapel Hill
Nona Machavariani-George Mason University
Holly Maguire-UNC – ISSS
Rhonda Mah-Radford University
Adam Mansfield-KU Legal Services for Students
Jessica McMahan-Lenoir Community College
Carrie McPeck-UNC General Administration
Andrea Meyer-Texas A&M University
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Julie Peaden-Pitt Community College
Jenna Petefish-Ball State University
Jackie Pollmiller-Duke University

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Marla Tart-Wake Technical Community College
Wesley Taylor-General Assembly
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Stephen Thomas-University of Florida
Phyllis Thomas-NC A&T State University
Randy Thomas-NC Office of State Controller
Sara Thorndike-UNCW
Angela Tuttle-UNCSA Foundation
Rebecca Urquhart-UNC Charlotte

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Barbara Wells-East Carolina University
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Xuefen Zhen-The University of Iowa

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