

To:	Grants Officers
From:	The Research Foundation of CUNY Office of Legal Affairs
Re:	Facts about Consultants

The IRS, the U.S. Department of Labor and some New York State agencies are aggressively enforcing regulations pertaining to the classification of independent contractors. Audits that find misclassifications result in revenues for agencies that are desperate for funds. Misclassification will result in the government's recovery of payroll taxes, social security payments, unemployment contributions and back wages, and most likely fines and other penalties. In an effort to avoid the possibility of misclassification, the RF offers this general guidance. The statements below cover common issues and pitfalls in classifying consultants.

The following are some facts that apply to the status Consultants.

- 1. No individual can receive a 1099 and a W-2 in the same calendar year.**
No one can be an employee and a consultant to the RF in the same year. Generally, once the relationship is established either as consultant or employee, it doesn't change.
- 2. An individual must have documentation of a current offering of services to the general public.**
Documentation includes: a client list of other consultancies including the dates of service, a web-site for promotion of services, professional liability insurance, business cards and advertising, e.g. Craigslist, telephone pages. Chances are that if you are not in the business of consulting, you are not a consultant for this program.
- 3. All retired and former employees of either the RF or CUNY who seek to qualify as consultants must also obtain an Employer Identification Number (EIN) from the IRS.**
You must qualify as a consultant and obtain an EIN number. EIN numbers are easily obtained from the IRS and are available by telephone or on-line.
- 4. Current RF and CUNY employees can not be consultants.**
- 5. Consultants are not re-imbursed for business expenses.**
- 6. Generally, consultants are paid a flat fee for services, not an hourly rate.**
- 7. Students, including graduate students, are not consultants.**

8. **Individuals who are classified as consultants are NOT eligible for unemployment from the RF.**
9. **Generally, consultants do not have continuing relationships with the RF. Employees have continuing relationships.**

REMEMBER NOT ONLY DOES THE STATUS OF THE INDIVIDUAL COUNT WHEN CLASSIFYING THE CONSULTANT BUT THE SERVICES TO BE PROVIDED MATTER AS WELL.

10. **Generally, the consultant has a certain skill not held by employees.**
11. **Consultants have their own space to work, their own tools to do the work and hire their own employees.**
12. **Consultants do not supervise or train RF or CUNY employees nor are consultants supervised or trained by RF or CUNY employees.**
13. **Consultants do work that is not done by employees, usually requiring a special skill or level of expertise not held by the employees.**
14. **Consultants are temporary, set their own sequence of work and produce a product without the control of the Program Director.**
15. **Consultants do not perform services essential to the operations of RF or CUNY.**
Individuals who perform essential services are employees. For instance, teachers would not be consultants because CUNY is a school.

To see more about Consultants look at the RFCUNY website Policy 518-C or go to www.IRS.gov and look for Publ 1779.