

Guidelines for Passive Income for F-1/J-1 Students

This document is meant to provide general guidelines for F-1 and J-1 students at Brigham Young University (BYU). Terms, definitions, and interpretations used in this document and by BYU's International Student and Scholar Services Office (ISSS) may differ from those used or adopted by other educational institutions and across different circumstances. ISSS strongly encourages international students to consult with a qualified attorney regarding receipt of remuneration outside of on-campus employment or approved off-campus employment (including CPT, OPT, and Academic Training).

What constitutes employment? ISSS defines employment for F and J visa purposes as rendering a service or producing a product, which benefits another person/company, in exchange for remuneration. "Remuneration" includes both financial (e.g., money, discounts) and non-financial (e.g., memberships, goods) benefits. Remuneration received from any employment-based activity is considered "active income."

What constitutes passive income? IRS [Publication 925](#) describes passive income as income in which there was no "material participation" involved, and lists examples, including: income from personal portfolios (pensions, annuities, dividends, etc.); income from intangible property such as patents or copyrights; or rental property income. However, it is important to remember that other agencies (namely SEVP and USCIS in this case) may look at activities, and income derived therefrom, differently than the IRS does for taxation (see, for example, *Wettasinghe v. U.S. Dept. of Justice, I.N.S.*, 702 F.2d 641 (6th Cir.1983) (distinguishing between investing and employment activities)).

Is receiving remuneration from participating on social media, donating plasma, or selling products or services considered active employment? Any activity where an individual puts in time and effort to generate income would likely be considered active employment.

Does the location of my work activity matter? Yes. Any activity done outside of the U.S. does not constitute work for F or J visa purposes. Thus, if an individual performs work in another country, any residual, passive income from that work that follows after the individual's entry into the U.S. is acceptable and does not require F or J visa employment authorization. For example, an international student who develops an online app while in his/her home country, and then receives residual money from that app while in the U.S. on an F or J visa, would be considered as receiving passive income only. Any continuation of active employment while physically in the U.S., however, requires the appropriate employment authorization, regardless of where the company is located or if foreign bank accounts are set up to receive payment for such work.

In the case of international students or scholars writing articles as part of their academic program, resulting residual income could be permissible if the articles were written as part of program expectations.

Does ISSS monitor BYU international students' activities that generate active or passive income?

Yes—to a certain extent. ISSS does not act as a policing force in the community. However, as Designated School Officials (DSO) for the Department of Homeland Security, and Responsible Officers (RO) for the Department of State, ISSS advisors with constructive knowledge about unauthorized employment are required by law to terminate a student's visa status immediately.

What other factors should I consider when I look at active vs. passive income? While ISSS cannot speak for the government as to active versus passive employment, there are factors that might be considered, such as the frequency and consistency of the work. For example, donating plasma or selling something online only once may be looked at differently than consistent or more frequent donations/sales. Likewise, the amount of remuneration received may not be as relevant as the time commitment given by the individual. Additionally, when one applies for visa benefits in the future, such as for OPT or other work authorization, USCIS may look at past employment as part of its review and approval process.