

DEPARTMENT OF WORKFORCE DEVELOPMENT
DIVISION OF WORKFORCE SOLUTIONS
ADMINISTRATOR'S MEMO SERIES

ACTION
 NOTICE 06-22

ISSUE DATE: 11/22/2006
DISPOSAL DATE: Ongoing

*PROGRAM CATEGORIES:

AS FM ML TR
 CC FL NA W-2
 CS IT RA WIA
 CF JC TC
 CR LM TA

To: Workforce Development Board (WDB) Directors
WDB Chairmen
Local Elected Officials
WIA Grantees (WIA 10% funded)

From: Bill Clingan /s/
Division Administrator

RE: WORKFORCE INVESTMENT ACT SALARY AND BONUS LIMITATIONS

PURPOSE: To announce implementation of Section 7013 of Public Law 109-234 which sets limitations on salary and bonus payments for Employment and Training Administration (ETA) funded recipients and sub recipients.

BACKGROUND: On June 15, 2006 an emergency supplemental appropriations bill, Public Law 109-234, was signed into law by President Bush. The U.S. Department of Labor (DOL) issued Training and Employment Guidance Letter 5-06 on August 15, 2006 implementing the salary and bonus limitations within that law. Section 7013 of Public Law 109-234 limits the amount of salary and bonus compensation paid to individuals out of funds appropriated to ETA. The limitation applies to both the recipients and sub-recipients of ETA appropriated funding. The provisions of P.L. 109-234 and TEGL 5-06 are retroactively effective June 15, 2006. Specifically, section 7013 states:

None of the funds appropriated in Public Law 109-149 or prior Acts under the heading 'Employment and Training' that are available for expenditure on or after the date of enactment of this section shall be used by a recipient or sub recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of public Law 109-149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular A-133. Where States are recipients of such funds, States may

* PROGRAM CATEGORIES:

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|------------------------------|---------------------------------------|------------------------------|-------------------------------|
| AS--Apprenticeship Standards | FM--Financial Management Requirements | ML--Migrant Labor | TR--Transportation |
| CC--Child Care | FL--Foreign Labor Certification | NA--Native American Services | W-2--Wisconsin Works |
| CS--Child Support | IT--IT Systems | RA--Refugee Assistance | WIA--Workforce Investment Act |
| CF--Children First | JC--Job Center | TC--Tax Credit Programs | |
| CR--Civil Rights | LM--Labor Market Information | TA--Trade Assistance | |

establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from sub recipients of such funds, taking into account factors including the relative cost-of-living in the State, the compensation levels for comparable State or local government employees, and the size of the organizations that administer Federal programs involved including Employment and Training Administration programs.

What the Limit Is:

Public Law 109-234 sets the limit on salaries and bonuses at a rate equivalent to no more than Executive Level II. A salary table providing this rate is listed on the Federal Office of Personnel Management web site (www.opm.gov) under Federal Salaries and wages. These levels are adjusted annually and the website is updated annually. For 2006 the limit is set at \$165,200.

Programs Impacted by this Provision:

The new salary and bonus limitation applies to all programs administered by ETA, and activities undertaken through grants and contracts funded by an appropriation to ETA, unless the program falls within an exception (see TEGL 5-06 for specifics on all exceptions).

Exceptions pertinent to WDBs:

This limitation does not apply to programs funded by H-1B grant funds. These funds are received from employer fees and are not appropriated. Examples of such programs include activities funded through the Workforce Innovation in Regional Economic Development Initiative and some High Growth Job Training Initiative grants.

This limitation does not apply to WIA incentive grants financed only through Department of Education appropriations.

Any limitations on payments to individuals contained in grants or contracts with ETA which are more restrictive than Public Law 109-234 are not changed. For example, any limitation on consultant fees in grants or contracts are generally more restrictive than the limitations in Public Law 109-234, when broken down as an hourly rate, and will continue to apply.

Covered Individuals and Transactions:

The State and WDBs as recipients or sub recipients of funds appropriated through ETA are covered by the salary limitation in Public Law 109-234, as are their sub recipients. Any salary or bonus payment made by a recipient or sub recipient to an individual are covered by this limitation. This limitation applies to such payments regardless of whether they are paid as a direct or an indirect cost.

The provisions of Section 7013 do not apply to benefits that are not salary and bonuses. For example, fringe benefits, insurance premiums or pension plan payments are not included in this limitation.

The sum of all bonuses received over the previous 12 month period, when added to the employee's salary, may not at any time exceed the limitation.

The provisions of Section 7013 do not apply to "vendors" as defined in OMB Circular A-133 (<http://www.whitehouse.gov/omb/circulars/a133/a133.html>). A vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. For example, an office supply business that provides "off the shelf" paper, printers, computers, software, etc. to other businesses and individuals, as well as to grant programs would be a vendor. Also, a training institution which provides one of its accounting courses/classes to any interested individual, as well as to clients of an ETA funded

grant program, is acting as a vendor. However, when that same training institution develops and delivers a training course specifically for an ETA-funded program it is acting as a sub recipient even if others are allowed to attend and pay for the course/class at the institution's tuition rate.

Co-funded payments:

A recipient or sub recipient may receive funds from ETA that are a combination of funds appropriated to ETA and funds not appropriated to ETA. They may also receive funds from other Federal programs, from the state, from municipalities, or even private funds that are not impacted by section 7013 of Public Law 109-234. In this situation, the limitations of section 7013 apply to the portion of the funding that is appropriated to ETA.

In instances where an individual may be funded by a mix of ETA appropriated funds and other funds, the ETA appropriated funds may only be charged for the share of the employee's salary attributable to the work on the ETA appropriated grantor contract. That portion cannot exceed the Public Law 109-234 limitation. For example, if 25% of an employee's time is attributable to work performed under ETA appropriated grants or contracts, and the limitation is \$165,200, no more than \$41,300 (25% of \$165,200) can be charged to the ETA appropriated grants during the year.

Effective Date:

The limitations on salaries and bonuses applies to funds appropriated in Fiscal Year 2006 under Public Law 109-149 and prior year appropriations under the heading 'Employment and Training' that remain available for expenditure. It applies to funds that are available for expenditure on or after June 15, 2006, when the law was enacted.

POLICY:

All grants and contracts funded by ETA appropriated funds are subject to the salary and bonus limitation enacted in Public Law 109-234 effective June 15, 2006.

ACTION SUMMARY STATEMENT:

All WDBs should become familiar with the requirements of Section 7013 of Public Law 109-234 and TEGL 5-06. Grantees should similarly familiarize their sub recipients and sub grantees of these requirements. WDBs must implement these new salary and bonus limitations retroactively to June 15, 2006. Charges to affected grant programs for salaries over the limitations will need to be adjusted back to June 15, 2006.

In addition, all WDBs must complete the DOL salary survey.

CONTACT: If you have any questions about this memo and the attachment, please contact Mark Macke at 608-266-5309 or mark.macke@dwd.state.wi.us or Nancy Eilks at 608-267-2985 or nancy.eilks@dwd.state.wi.us.

List of Major Grants Affected:

- Workforce Investment Act Annual Funding Agreements (WIA Formula Grants, WIA Rapid Response, and WIA 10% Statewide Programs)
- Workforce Investment Act National Emergency Grants
- WIA Section 173(e) grants
- Trade Adjustment Assistance Act Annual Cooperative Financial Agreements
- Unemployment Insurance Annual Funding Agreements
- Wagner-Peyser Act Annual Funding Agreements