

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Workforce Investment System – System Wide
	CORRESPONDENCE SYMBOL OPDR
	DATE August 15, 2006

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 5-06

TO: ALL EMPLOYMENT AND TRAINING ADMINISTRATION (ETA)
GRANTEES, CONTRACTORS AND OTHER RECIPIENTS OF ETA
APPROPRIATED FUNDS

FROM: EMILY STOVER DeROCCO
Assistant Secretary



SUBJECT: Implementing the Salary and Bonus Limitations in Public Law 109-234

1. Purpose. To inform states and other Employment and Training Administration (ETA)-fund recipients and sub-recipients of a new limitation on salary and bonus payments that can be made with funds appropriated to ETA and provide guidance on implementing this new provision.
2. References. Pub. Law 109-234
3. Background. On June 15, 2006, President Bush signed into law an emergency supplemental appropriations bill, Public Law 109-234. Section 7013 of this public law limits salary and bonus compensation for individuals who are paid by funds appropriated to the Employment and Training Administration and provided to recipients and sub-recipients. 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 subrecipient 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 establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from subrecipients 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.

4. Policy Guidance. This policy guidance provides the workforce investment system with information on programs that are impacted by this provision; the effective date and cycles of funding that are impacted; covered individuals and transactions; the application of the

limitation; related grant and contract modifications; action required; and where to direct inquiries.

5. Programs Impacted by this Provision. The new salary and bonus limitation applies to all programs and activities undertaken through grants and contracts funded by an appropriation to ETA. Therefore, this limitation applies to all programs administered by ETA, unless the program falls within an exception outlined below.

The salary and bonus limitation also applies to programs funded by an ETA appropriation, but administered by another agency. For example, certain programs funded by ETA appropriations are administered by the Department of Labor's Veterans Employment and Training Service or the Department of the Interior. ETA will inform agencies which administer such programs of this new requirement. Any questions should be directed to the administering agency.

A recipient or sub-recipient may receive funds from ETA that are a combination of funds appropriated to ETA and funds that are not appropriated to ETA. In this situation, the limitations of section 7013 as described in this TEGl apply to the portion of the funding that is appropriated to ETA.

Exceptions:

This limitation does not apply to programs funded by H-1B grant funds. These funds are received from employer paid fees and are not appropriated. Therefore, the programs they fund are not covered by the salary and bonus limitation. Examples of such programs include activities funded through the WIRED Initiative and some High Growth Job Training Initiative grants.

The limitation also does not apply to the Disaster Unemployment Assistance (DUA) program. These funds are appropriated to the Federal Emergency Management Agency (FEMA) and transferred to ETA.

WIA incentive grants financed only through Department of Education appropriations are not covered by this limitation.

Public law 109-234 specifically states that it does not change the limitations that Public Law 109-149 section 101 previously set for individuals paid through the Job Corps program. These limitations are still in effect. Questions concerning the applicability of the new provision to any Job Corps funds should be directed to Job Corps officials.

Any limitation on payments to individuals contained in grants or contracts with ETA which are more restrictive than Public Law 109-234 are not changed by Public Law 109-234. For example, any limitation on consultant fees in grants or contracts are generally more

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restrictive than the limitations in Public Law 109-234, when broken down as an hourly rate, and will continue to apply.

- 6. Effective Date and Funding Cycles Impacted. The limitation on salaries and bonuses applies to funds appropriated in Fiscal Year 2006 under Public Law 109-149 and prior year appropriation funds 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. It does not apply to funds expended before June 15, 2006.
- 7. Covered Individuals and Transactions. The provision in Public Law 109-234 limits the use of funds used by a recipient or sub-recipient to pay for salary and bonuses of an individual. Examples of recipients include entities and their funded partners that receive contracts and grants from ETA. Examples of sub-recipients include sub-contractors or sub-grantees. Any salary or bonus payments made by a recipient or a 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.

However, according to the law this limitation does not apply to "vendors" as defined in OMB Circular A-133. A vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. Characteristics indicative of a payment for goods and services received by a vendor are when the organization: (1) Provides the goods and services within normal business operations; (2) Provides similar goods or services to many different purchasers; (3) Operates in a competitive environment; (4) Provides goods or services that are ancillary to the operation of the Federal program; and (5) Is not subject to compliance requirements of the Federal program.

For example, an office supply business that provides "off the shelf" paper, printers, computers, software, etc. to other businesses, 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.

- 8. Application of the Limitation. The law 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 & Wages. These levels are adjusted annually and the Web site is updated annually. For FY 2006, the limit is set at \$165,200. The Public Law 109-234 limitation does not apply to benefits that are not salary and bonuses. For example, fringe benefits, insurance

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premiums or pension plans paid by a recipient or sub-recipient are not included in this calculation.

Individuals can receive payments from funds not impacted by section 7013 in addition to funds that are impacted by 7013. For example an entity may receive funds from other Federal programs, from the state, from municipalities, or even private funds. In those instances the total sum of any employee's salary and bonuses may be higher than Executive Level II. However, in instances where funds impacted by section 7013 only pay a portion of the salary, the section 7013-impacted funds may only be charged for the share of the employee's salary attributable to the work on the section 7013-impacted grant or contract. That portion cannot exceed the Executive Level II rate. For example, if 25 percent of an employee's time is attributable to work performed under grants covered by the provision and the annual Executive Level II amount is \$165,200, no more than \$41,300 can be charged to ETA during the year.

If not already done, all affected recipients or sub-recipients must implement these requirements retroactively to the date of enactment, June 15, 2006. This provision means that salary payments will need to be adjusted back to June 15, 2006.

Bonuses: The restriction applies to both salaries and bonuses. 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. For example, an employee paid at a \$162,000 may not receive bonuses in any 12-month period that exceeds \$3,200, assuming the limitation of \$165,200.

When states are the recipients of the funds, states can set a limit below Executive Level II for salaries paid by sub-recipients. However, states should take the factors listed in section 7013 into account when re-designating the limit.

9. Grant and Contract Modifications. Please be advised ETA will modify appropriate grants and contracts to conform to the new requirements of Public Law 109-234.
10. Action Required. All recipients of ETA appropriated funds should become familiar with the requirements of Public Law 109-234. States shall inform all staff, sub-recipients (sub-grantees and contractors) and Local Workforce Investment Boards of the contents of these instructions. Discretionary grantees should similarly familiarize themselves, their sub-recipients (sub-grantees and sub-contractors) with this guidance. If not already done, all affected ETA fund recipients or sub-recipients must implement these new requirements retroactively to the date of enactment, June 15, 2006.
11. Inquiries. States, discretionary grantees and other ETA appropriated fund recipients should direct all inquiries to their Grant Officer, Contract Officer or Federal Project Officer.

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