

## Salary and Bonus Limitations

**SUBJECT:** Salary and Bonus Limitations

**REFERENCE:** Public Law 109-234; Public Law 109-149; OMB Circular A-133; TEGL 5-06; and Federal Register, Vol. 71, No. 161, August 21, 2006.

**BACKGROUND:** Following reports of significant abuses of administrative costs by a local Worker Investment Board in another state, Congress included language in an emergency supplemental appropriations bill, Public Law 109-234, limiting salary and bonus compensation for individuals who are paid by funds appropriated to the U.S. Department of Labor, Employment and Training Administration and provided to recipients and subrecipients. This Act was signed by President Bush on June 15, 2006. Section 7013 states: "None of the funds appropriated in Public Law 109-149 or prior Acts under the heading 'Employment and Training Administration' 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."

**POLICY:** Affected Programs

The new salary and bonus limitation applies to all programs and activities undertaken through grants and contracts funded by an appropriation to the Employment and Training Administration (ETA). All programs, including the Workforce Investment Act (WIA) program, administered by ETA are covered by this provision unless the program falls within an exception as outlined below. The 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. When a recipient or subrecipient receive funds from ETA that are a combination of funds appropriated to ETA and funds not appropriated to ETA, then the limitations of section 7013 apply to the portion of the funding that is appropriated to ETA.

### Exceptions

Federal WIA Section 503 Incentive grants financed only through Department of Education appropriations are not covered by this limitation. The limitation also does not apply to the Disaster Unemployment Assistance (DUA) program since these funds are appropriated to the Federal Emergency Management Agency (FEMA) and then transferred to ETA. The 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 Workforce Innovation in Regional Economic Development (WIRED) Initiative and some High Growth Job Training Initiative grants. Public Law 109-149 section 101 previously set the limitation for individuals paid through the Job Corps program at a rate not in excess of Executive Level I and that limitation is still in effect. 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. 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 provision in Public Law 109-234 limits the amount of funds used by a recipient or subrecipient to pay for salary and bonuses of an individual. Any salary or bonus payments made by a recipient or a subrecipient to an individual are covered by this limitation.

A recipient means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program. Examples of recipients include entities

and their funded partners that receive contracts and grants from ETA.

A subrecipient means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from the Federal awarding agency. Examples of subrecipients include sub-contractors or sub-grantees.

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. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Characteristics indicative of a payment for goods and services received by a vendor are when the organization: provides the goods and services within normal business operations; provides similar goods or services to many different purchasers; operates in a competitive environment; provides goods or services that are ancillary to the operation of the Federal program; and is not subject to compliance requirements of the Federal program.

#### 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 'Employment and Training Administration' appropriated funds that remain available for expenditure. It applies to funds available for expenditure on or after June 15, 2006. If funds were expended before June 15, 2006, then this limitation is not applicable to those funds.

#### 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](http://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 premiums or pension plans paid by a recipient or subrecipient are not included in this calculation.

In some cases, individuals receive payments from funds not impacted by this limitation, in addition to funds impacted by section 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.

Since 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.

If not already done, all affected ETA fund recipients or subrecipients must implement these new requirements retroactively to the date of enactment, June 15, 2006.