

Preliminary Policy on Salary and Bonus Limitations

Reference:

Workforce Innovation and Opportunity Act, Sections 101, 107, and 194; [Workforce Innovation and Opportunity Act – Notice of Proposed Rulemaking](#), 20 CFR §683.290; 20 CFR Part 200 [Uniform Requirements, Cost Principles, and Audit Requirements for Federal Awards Final Rule](#) (Uniform Guidance)

Background:

WIOA provides limitations on the salaries and bonuses of recipients or subrecipients of Title I Workforce Development Activities and the Wagner-Peyser Act.

Although WIOA applies these limitations to WIOA Title I funding, the United States Department of Labor (USDOL) expanded application to Wagner-Peyser Act recipients and subrecipients. The appropriations acts for the last 9 years (Pub. L. 109-234 June 15, 2006) have applied to all Employment and Training Administration (ETA) funded programs; thus, interpreting the provision as applying to Wagner-Peyser funded activities is appropriate. Additionally, it is USDOL's policy to ensure that funding is directed to substantive workforce employment and training activities to the greatest extent possible, rather than to administrative costs.¹

Action:

The provisions of this policy go into effect on July 1, 2015.

Policy:

General Requirements Concerning Salary and Bonus Limitations

None of the funds available under Title I Workforce Development Activities, or under the Wagner-Peyser Act, shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct or indirect costs, at a rate in excess of the annual rate of basic pay prescribed for level II of the Executive Schedule under Section 5313 of title 5, United States Code.² 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 2015, the limit is set at \$183,300.³

¹ WIOA NPRM

² WIOA Section 194(15)(A), 20 CFR §683.290(a)

³ <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/EX.pdf>

In a case in which a State is a recipient of such funds, the State may establish a lower limit than is prescribed for level II of the Executive Schedule under Section 5313 of title 5, United States Code, 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 the Federal program involved.⁴

Contractors

This limitation does not apply to contractors providing goods and services as defined in in the OMB's Uniform Guidance (which supersedes OMB Circular A-133 cited in the statute).⁵ USDOL has used the term "contractors" instead of the statutory term "vendor" to ensure consistency with the term as defined in §200.23 of the Uniform Guidance.⁶ In accordance with §200.330 of the Uniform Guidance, characteristics indicative of a contractor are:

- Provides the goods and services within normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally 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 as a result of the agreement, though similar requirements may apply for other reasons.⁷

Directors and Staff Hired by State or Local Boards

The State board may hire a director and other staff to assist in carrying out its functions described in Sec. 101(d) using funds available as described in 129(b)(3) (Statewide Youth Workforce Development Activities) or 134(a)(3)(B)(i) (Limitation on Allowable Statewide Adult and Dislocated Worker Employment and Training Activities).⁸ The local board may also hire a director and other staff in order to assist in carrying out its functions described in 107(d) using funds available under 128(b) (Within State Allocations for Youth Workforce Development Activities) and 133(b) (Within State Allocations for Adult and Dislocated Worker Employment and Training Activities) as described in 128(b)(4) (Local Administrative Cost Limit).⁹ In either case, the director and staff shall be subject to the limitations on the payment of salary and bonuses described in Sec. 194(15).¹⁰

⁴ WIOA Section 194(15)(B), 20 CFR §683.290(d)

⁵ WIOA Section 194(15)(B), 20 CFR §683.290(c)

⁶ WIOA NPRM

⁷ 20 CFR §683.290(c)

⁸ WIOA Section 101(h)(3)

⁹ WIOA Section 107(f)

¹⁰ WIOA Sections 101(h) and 107(f)

Employees Funded by More than One Program or Employed by More than One Office

In terms of an employee who is funded by more than one program or works for more than one office, if funds awarded under Title I of WIOA or the Wagner-Peyser Act pay only a portion of such an employee's salary or bonus, such funds may only be charged for the share of the employee's salary or bonus attributable to the work performed on the respective program's grant. That portion cannot exceed the proportional Executive level II rate. This restriction applies to the sum of salary and bonus payments made to an individual whether they are charged as direct costs or indirect costs under title I of WIOA and Wagner-Peyser.¹¹

When an individual is working for the same recipient or subrecipient in multiple offices that are funded by title I of WIOA or the Wagner-Peyser Act, the recipient or subrecipient must ensure that the sum of the individual's salary and bonus payments does not exceed the prescribed level II of the Executive Schedule limitation.¹² This helps to ensure that WIOA and Wagner-Peyser Act funds are not overcharged for salary and bonus payments and that there are no "loopholes" in applying the limitation.¹³

Disclaimer:

This policy is based on NDOL's reading of the statute along with the Notice of Proposed Rulemaking released by USDOL. This policy may be subject to change as additional federal regulations and TEGLs are released. This policy is not intended to be permanent and should be viewed as a placeholder until final federal regulations are released in early 2016.

¹¹ 20 CFR §683.290(b)

¹² 20 CFR §683.290(e)

¹³ WIOA NPRM