



# Workforce Development System Technical Advisory



October 20, 2006

## Workforce Development System Technical Advisory #06-18

**TO:** Chairpersons of Local Workforce Investment Boards  
Chief Elected Officials  
WIA Grant Recipients  
WIA Fiscal Agents  
WIA Local Area Contacts

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

**PURPOSE:** To inform Local Workforce Investment Areas (LWIAs) of a new limitation on salary and bonus payments that can be made with funds appropriated to the Employment and Training Administration (ETA) and to provide the LWIAs with New York State Department of Labor (NYSDOL) policy and guidance on implementing this new provision

**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 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 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.

**ACTION:**

All recipients of ETA appropriated funds should become familiar and comply with the requirements of Public Law 109-234, Local Workforce Investment Areas, Local Workforce Investment Boards, Grant Recipients and fiscal agents shall establish and implement necessary local policies to ensure adherence to salary and bonus limitation requirements within the local area and it's sub-recipients (sub-grantees and contractors). For the LWIAs, this would include all performance based contracts with their sub-recipients (e.g., One-Stop Operator, Youth Providers, etc.). Discretionary grantees should similarly familiarize themselves, their sub-recipients (sub-grantees and sub-contractors) with this guidance.

To accomplish this, all LWIAs and Discretionary grantees should impose the following grant modification language in all of their PY 2004, PY 2005 and PY 2006 ETA funding agreements:

Salary and Bonus Limitations: In compliance with Public Law 109-234, 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 June 15, 2006, 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 Local Workforce Investment Areas (LWIAs) and Discretionary grantees are recipients of such funds, LWIAs and Discretionary grantees 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.

Any LWIA bonus payments must be submitted to the NYSDOL for review and approval. The LWIAs are also responsible for their subrecipients to submit any bonuses for review and approval by the local area. A bonus is defined as money or something of value given to an employee in addition to the employee's hourly wage or salary, in recognition of a notable or exceptional accomplishment. Fringe benefits are not considered bonuses. Although a payment may be titled an incentive

payment, discretionary compensation, or some other name, any of these payments is considered a bonus for the purpose of this policy.

**NYS DOL Policy:**

Employee bonuses are an allowable cost if all of the following are true:

- The LWIA (affected agency) submits its bonus policy to the Department for approval.
- The LWIA's submission under this policy includes the following:
  - a detailed description of the agency's employee bonus system;
  - an explanation of what behaviors and/or outcomes will be rewarded by an employee bonus;
  - an explanation of how the proposed employee bonus system will impact the agency's performance during the affected period;
  - an identification of which types of personnel will be eligible for bonuses and the maximum amount of the bonus per type; and
  - if the LWIA is administered by a non-profit or for-profit organization, documentation that demonstrates the agency's employee compensation including the proposed bonuses are reasonable for the labor market (i.e., comparable to amounts paid for similar work in that labor market).
- The LWIA has a written policy on the provision of bonuses in effect at the time of the proposed bonuses.
- The LWIA's written policy on bonuses is consistently applied.
- The Department approves the agency plan.

**Procedures:**

Prior to the payment of bonuses to employees as a part of their compensation, the LWIA must submit a copy of the agency's employee bonus policy, that responds to the requirements of the policy stated in this Technical Advisory, to their designated Financial Oversight and Technical Assistance (FOTA) representative. The FOTA representative will then submit the agency's employee bonus policy to the FOTA supervisor for approval. The Department will review the LWIA's submission and provide a response within ten (10) business days. The Department will determine whether the total compensation is considered reasonable as defined by in the appropriate OMB circulars and that all other requirements are met. Amendments to the employee bonus system or its application must be submitted for prior approval. A LWIA may not submit expenses for employee bonuses until the Department has approved the agency's employee bonus policy.

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.

Questions regarding this Technical Advisory should be directed to the LWIA's FOTA Representative.

**GUIDANCE:**

This policy guidance provides the local 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.

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 the exception outlined below.

Exception: 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.

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.

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.

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 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, non ETA funded 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.

LWIAs can set a limit below Executive Level II for salaries paid by themselves or their sub-recipients. However, LWIAs should take the factors listed in section 7013 into account when re-designating the limit.

Please be advised NYSDOL will modify appropriate grants and contracts to conform to the new requirements of Public Law 109-234.

RESCINDED