

TEXAS WORKFORCE COMMISSION LETTER

ID/No:	WD 28-07, Change 1
Date:	November 5, 2009
Keyword:	Fiscal Admin
Effective:	Immediately

To: Local Workforce Development Board Executive Directors
Commission Executive Offices
Integrated Service Area Managers



From: Laurence M. Jones, Director, Workforce Development Division

Subject: **Limitations on Salaries and Bonuses Paid with Workforce Investment Act and Wagner-Peyser Funds—Update**

PURPOSE:

To provide Local Workforce Development Boards (Boards) with guidance on the applicability and implementation of Public Law (PL) 109-234 **and subsequent laws**, relating to limitations on salaries and bonuses paid with funds appropriated by Congress to the U.S. Department of Labor Employment and Training Administration (DOLETA).

CHANGES TO WD LETTER 28-07:

New information in this WD Letter is indicated by:

- A ~~strike through~~ of the original language, which indicates that language has been deleted: and
- **Bold** typeface, which indicates new or clarifying language.

BACKGROUND:

On June 15, 2006, President Bush signed PL 109-234, which **affected the Department of Labor Appropriations Act, 2006 (PL 109-149)**, and was enacted in response to Congressional concerns over the reasonableness of salaries and bonuses that were paid in whole or part with DOLETA funds. Effective on that date, DOLETA subrecipients, including Boards and Boards' subrecipients, were prohibited from using DOLETA funds to pay amounts in excess of DOLETA's *prorated share* of the federal Executive Level II annual salary rate.

As such, the limitation only impacts subrecipients if the total combined salary and bonus(es) *paid* (from all fund sources) by a subrecipient to any of its employees during a calendar year exceeds the federal Executive Level II annual salary rate for that year. If that occurs, the amount that can be paid from DOLETA funds is capped at DOLETA's prorated share of the federal Executive Level II annual salary rate as described in this WD Letter. An amount is

considered “paid” if it is included as salaries and wages on an individual’s Internal Revenue Service (IRS) Form W-2 for the year.

Subsequent appropriations acts for DOL carried forward the limitation through the current year. Future appropriations acts will likely continue to include the limitation.

Federal Executive Level II Annual Salary Rate

The federal Executive Level II annual salary rate is updated and published each calendar year by the federal Office of Personnel Management (OPM). The rate in effect for a particular year may be accessed at: <http://www.opm.gov/oca/09tables/index.asp>, by selecting a calendar year, and opening the *Executive Schedule* link for that year.

- For calendar year 2006, the rate is \$165,200.
- For calendar year 2007, the rate is \$168,000.
- **For calendar year 2008, the rate is \$172,200.**
- **For calendar year 2009, the rate is \$177,000.**

~~OPM has not yet published rates for calendar years after 2007.~~ OPM typically publishes such **Executive Level II annual salary** rates in January of each calendar year.

Example

The total combined salary and bonuses that a subrecipient paid to an employee during calendar year 2007 was \$170,000. The individual was employed by the subrecipient as a full-time employee for all twelve months of the 2007 calendar year. Because the combined salary and bonuses paid to the individual during the calendar year exceeded the federal Executive Level II annual salary rate for calendar year 2007 (\$168,000), the portion of the salary that was paid with DOLETA funds would be limited by DOLETA’s prorated share of the federal Executive Level II annual salary rate for that year.

Therefore, if DOLETA programs were charged \$136,000 or 80% of the individual’s combined salary and bonuses that were paid during the year, \$134,400 (80% x \$168,000) is the maximum allowable amount that could be funded with DOLETA funds. Application of this regulation, along with additional examples, is shown in Attachment 1 to this WD Letter.

Affected Funds

The DOLETA funds that Boards receive from the Texas Workforce Commission (Commission) that are subject to the limitation are Workforce Investment Act (WIA) and Wagner-Peyser (WP) funds. The limit applies to salary and bonus expenditures paid with these funds on or after June 15, 2006, regardless of program year, fiscal year, or Board contract year designation.

The cap on the DOLETA-funded portion of salaries and bonuses applies regardless of whether the salary or bonus receives treatment as a direct or an indirect cost. The limit does not apply to any DOLETA-funded salary and bonus expenditures that were paid prior to June 15, 2006.

Recipients and Subrecipients

The law specifically applies the limitation to recipients and subrecipients, and excludes vendors. The terms “recipient,” “subrecipient,” and “vendor” have the meanings in Office of Management and Budget (OMB) Circular A-133:

Recipient means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

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 a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in §__.210.

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. Additional guidance on distinguishing between a subrecipient and a vendor is provided in §__.210.

Note that an entity may simultaneously meet the definition of a recipient under one agreement, a subrecipient under another agreement, and a vendor under another agreement, depending on the services it provides under each. Prior to contracting with an entity, Boards, with concurrence with their independent auditors, are responsible for using the guidance in OMB Circular A-133 to determine whether the entity is a vendor or subrecipient under the arrangement. Such determination affects the requirements that apply to the entity and the Board’s oversight responsibilities for the entity.

Salaries and Bonuses

Salaries and bonuses are the wages and bonuses that are most often included in either Box 3 or 5 of an individual’s IRS Form W-2.

- Salaries include, but are not limited to, regular pay, merit increases, overtime pay, across-the-board pay increases, and severance pay. For purposes of applying the PL 109-234 limitation, it also includes deferred compensation whether or not such compensation is reportable on Form W-2.
- Bonuses include, but are not limited to, monetary awards and prizes, day-off awards, and profit sharing when it is part of personnel policies and not paid on a per share basis that required investment.

Salaries and bonuses do not include fringe benefits, insurance premiums, pension plans, or other benefits that are not treated by the IRS as salaries or bonuses.

Relationship to WD Letter 24-07, Change 1, ~~TA Bulletin 155~~, and State Salary Classification Requirements

WD Letter 24-07, **Change 1** and ~~TA Bulletin 155~~ provides guidance for determining the reasonableness of personnel compensation, including salaries and wages. ~~Guidance provided in TA Bulletin 155 states that such amounts are:~~

~~*Not to exceed amounts authorized by the Board's written policies and procedures, state salary classifications and schedules, and salary limitations imposed by P.L. 109-234.*~~

In applying this guidance, note that the highest salaries under state salary classifications and schedules exceed those authorized for DOLETA funds under PL 109-234. As such, PL 109-234 further limits the salaries and bonuses that are allowable for DOLETA funds. Satisfaction of the limit does not in and of itself satisfy the reasonableness criteria for salaries and bonuses.

PROCEDURES:

Effective retroactively from June 15, 2006, Boards must use the guidelines in this WD Letter and its attachment to determine whether salaries and bonuses paid by Boards to Board personnel (and by Boards' subrecipients to their personnel) using affected DOLETA funds are within the limit established by PL 109-234, §7013, **and subsequent laws**. Boards must maintain documentation to support the determination.

NLF

Boards must make the above determination annually, using the respective Executive Level II salary rate, until otherwise notified by the Commission.

NLF

Boards must not use DOLETA funds to pay amounts in excess of the limitation. Amounts in excess of the limitation are not allowable. Furthermore, unallowable costs cannot be shifted to other federally or state-funded programs to which the costs are not allocable and allowable.

NLF

Boards must adjust any previously reported salary and bonus expenditures to reverse any unallowable amounts that were paid on or after the June 15, 2006, effective date. The related funds must be refunded using the Cash Remittance Report available for download at: <http://www.twc.state.tx.us/twcinfo/contractcloseout.html>.

NLF

Boards must be aware that satisfaction of the limitation on DOLETA funds is not sufficient to demonstrate the reasonableness of salaries and bonuses, which must meet criteria in applicable cost principles, the Financial Manual for Grants and Contracts, and WD Letter 24-07, **Change 1**.

NLF

INQUIRIES:

Direct inquiries regarding allocations to Kimberly R. Emmerich, Director of Financial Operations, at Fiscal.TA@twc.state.tx.us.

ATTACHMENT:

Attachment 1: Guidelines for Implementing Public Law 109-234

RESCISSIONS:

WD Letter 28-07

REFERENCE:

Public Law 109-149, Title I

Public Law 109-234, §7013

Public Law 109-289, Division B, §104, as amended by Public Laws 109-369, 109-383, 110-5 and 110-92

Public Law 111-8, Division F, Title V, §111

United States Department of Labor Training and Employment Guidance Letter No. 5-06, issued August 15, 2006, and entitled “Implementing the Salary and Bonus Limitations in Public Law 109-234”

(<http://wdr.doleta.gov/directives/attach/TEGL/TEGL05-06.pdf>)

Texas Workforce Commission Financial Manual for Grants and Contracts

WD Letter 24-07, Change 1, issued October 5, 2007, and entitled “Reasonableness of Personnel

Compensation: Clarification and Additional Guidelines–*Update*”

FLEXIBILITY RATINGS:

No Local Flexibility (NLF): This rating indicates that Boards must comply with the federal and state laws, rules, policies, and required procedures set forth in this WD Letter and have no local flexibility in determining whether and/or how to comply. All information with an NLF rating is indicated by “must” or “shall.”

Local Flexibility (LF): This rating indicates that Boards have local flexibility in determining whether and/or how to implement guidance or recommended practices set forth in this WD Letter. All information with an LF rating is indicated by “may” or “recommend.”