



NEW YORK STATE WORKFORCE DEVELOPMENT SYSTEM TECHNICAL ADVISORY

Workforce Development System Technical Advisory #11- 8

TO: Workforce Development Community

DATE: July 7, 2011

SUBJECT: Reminder and Update Regarding the Salary and Bonus Limitations in Public Law 109-234

Purpose:

To remind Local Workforce Investment Areas (LWIAs) of the limitation on salary and bonus payments that can be made with funds appropriated to the Employment and Training Administration (ETA), which include Workforce Investment Act (WIA) and Wagner-Peyser funds, and to provide the LWIAs with New York State Department of Labor (NYSDOL) policy and guidance on implementing this provision. NYSDOL will be monitoring LWIAs for compliance with these requirements and LWIAs must monitor their sub-recipients for compliance with this provision.

This technical advisory (TA) rescinds and replaces TA#06-18, dated October 20, 2006.

Action:

All recipients of ETA-appropriated funds should be familiar and comply with the requirements of Public Law 109-234. LWIAs, Local Workforce Investment Boards (LWIBs), 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 its 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). Discretionary grantees should similarly familiarize themselves and their sub-recipients with this guidance.

To accomplish this, all LWIAs and Discretionary grantees should impose the following grant modification language in all of their 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 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 §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 LWIAs and Discretionary grantees are recipients of such funds, LWIAs and Discretionary grantees may establish a lower limit for the 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.

Any proposed LWIA bonus payments must be submitted to the NYSDOL for review and approval. The LWIAs are also responsible for assuring that their sub-recipients submit any proposed 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.

Policy:

Employee bonuses are an allowable cost if they meet the following criteria:

- The LWIA (affected agency) submits its written bonus policy to NYSDOL 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 payment of the bonuses.
- The LWIA's written policy on bonuses is consistently applied.
- NYSDOL approves the agency bonus plan.

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 ETA and provided to recipients and sub-recipients. Specifically, §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 §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.

The salary cap requirements are also referenced in USDOL Training and Employment Guidance Letter (TEGL) #26-10, issued on May 10, 2011, and have been the subject of findings in recent USDOL reviews of NYSDOL and LWIAs.

Inquiries:

Questions regarding this Technical Advisory should be directed to the LWIA's Financial Oversight and Technical Assistance (FOTA) Representative.

Attachments:

- A. Procedure and Guidance Regarding Salary and Bonus Limitations in Public Law 109-234
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