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

Kansas Department of Commerce
Workforce Services
Policy and Procedures Manual

Policy Number: 5-29-00

Originating Office: Workforce Services

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

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Programs: Workforce Innovation and Opportunity Act

Purpose: To inform WIOA sub-recipients of limitations on salary and bonus payments that can be made with funds appropriated to ETA and provide guidance on implementing this new provision.

Reference: Public 20 CFR Part 683.290, PL 109-234 Section 7013, PL 109-149 Section 101, OMB Circular A-133, Uniform Guidance Part 200 Subpart F, TEGL 5-06

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 (ETA) and provided to recipients and sub- recipients.

Action: All recipients of ETA appropriated funds should become familiar with the requirements of Public Law 109-234 and §683.290. Recipients shall inform all staff, sub-recipients (sub- grantees) and local workforce boards of the contents of these instructions. Discretionary grantees should similarly familiarize themselves, and their sub- recipients (sub-grantees) with this guidance. If not already done, all affected ETA fund recipients or sub-recipients must implement these new requirements retroactively to the date of enactment.

Contact: Questions should be directed to (785) 296-0607, TTD 1-800-766-3777, e-mail workforceservices@ks.gov

Attachment: None.

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Policy Guidance
This policy guidance provides the workforce 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 limitation, related grant and contract modifications; action required; and where to direct inquires.

Programs Impacted by this Provision
The 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 an exception outlined below.

The salary and bonus 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. ETA will inform agencies which administer such programs of this new requirement. Any questions should be directed to the administering agency.

A recipient or sub-recipient may receive funds from ETA that are a combination of funds appropriated to ETA and funds that are not appropriated to ETA. In this situation, the limitations of section 7013 apply to the portion of the funding that is appropriated to ETA.

Exceptions

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.

The limitation does not apply to the Disaster Unemployment Assistance (DUA) program. These funds are appropriated to the Federal Emergency Management Agency (FEMA) and transferred to ETA.

The limitation does not apply to that portion of fees, wages, salary or total compensation not impacted by section 7013 of PL 109-234.

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 by Public Law 109-234. For example, any limitation on consultant fees in grants or contracts are generally more restrictive than the limitations in Public Laws 109-234, when broken down as an hourly rate and will continue to apply.

Covered Individuals and Transactions
The provision in §683.290limits 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-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, this limitation does not apply to "contractors" as defined in 2 CFR 200.23 performing duties described in 2 CFR 200.330. A contractor 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 administers a training course specifically for an ETA funded program it is acting as a subrecipient 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) under Federal Salaries & Wages. These levels are adjusted annually and the Web site is updated annually.

Individuals can receive payments from non-ETA sources in addition to ETA funds . 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. In instances where ETA funds only pay a portion of the salary, the ETA funds may only be charged for the share of the employee's salary attributable to the work on the ETA grant or contract. That portion cannot exceed its proportional share of the Executive Level II rate

Bonuses

The restriction applies to both salaries and bonuses. The sum of all bonuses received over the previous 12-mont period when added to the employee's salary may not at any time exceed the limitation. For example, an employee paid at $162,000 may not receive bonuses in any 12-month period that exceeds $3,200, if the limitation is $165,200.

Grant and Contract Modifications

Locally awarded contracts and sub-awards of ETA funds should contain provisions informing the recipient of salary limitations under Public Law 109-234 and 20 CFR Part 683.290.