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SAN JOAQUIN COUNTY WORKNET EMPLOYMENT AND ECONOMIC DEVELOPMENT DEPARTMENT POLICIES AND PROCEDURES DIRECTIVE

| DIRECTIVE NO. | EFFECTIVE DATE | APPLICABILITY | PAGE |
|--|-----------------|---------------|--------|
| D-34 Rev. 5 | January 1, 2023 | Departmental | 1 of 3 |
| SUBJECT: SALARY AND BONUS LIMITATIONS | | | |

I. PURPOSE

This policy provides the guidance and establishes the procedures regarding salary and bonus limitations for individuals paid by funds appropriated to the Department of Labor (DOL) Employment and Training Administration (ETA). This policy applies to all subrecipients expending Workforce Innovation and Opportunity Act (WIOA) program funds. The 2023 salary rates for executive level employees became effective January 1, 2023.

II. GENERAL INFORMATION

On June 15, 2006, President Bush signed into law an emergency supplemental appropriations bill, Public Law 109-234. Section 7013 of this law limits the salary and bonus compensation for individuals paid by funds appropriated to ETA and provided to recipients and subrecipients. Specifically, Section 7013 states the following:

“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 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 limit shall not apply to vendors providing goods and services as defined in the Office of Management and Budget 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 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 organization that administers federal programs involved including Employment and Training Administration programs.”

As a result of this law, the ETA issued TEGL 05-06 (See attached) on August 15, 2006. This TEGL discusses the limitations on salary and bonus payments that can be made with funds appropriated to the ETA. Specifically, this TEGL provides information on programs affected by this provision, effective dates and funding cycles, covered individuals and transactions, application of the limitation, and related grant and contract modifications.

References:

- State of California Employment Development Department, Workforce Services Directive WSD22-10
- Emergency Supplemental Appropriations Act for Defense, The Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234), Title VII, Section 7013
- DOL Training and Employment Guidance Letter (TEGL) 05-06, Implementing the Salary and Bonus Limitations in Public Law 109-234 (August 15, 2006)
- U.S. Office of Personnel Management, 2023 Rates of Pay for the Executive Schedule

III. POLICY

As the Administrative Entity/Fiscal Agent for the Workforce Development Board and its WorkNet Service Delivery System it shall be the policy of the employment and Economic Development Department of San Joaquin County to adhere to this policy as outlined in State Directive WSD22-10 (see attached) and any subsequent modifications of said Directive. This policy will remain in effect from the date of issue until such time that a revision is required.

A salary table providing the Executive Level II rates is updated annually and can be found on the Federal Office of Personnel Management Website (www.opm.gov) under Policy, Pay and Leave. These levels are adjusted annually. Effective January 1, 2023, the salary and bonus limit is set at \$212,100 until further notice is made available. It should be noted that Public law 109-234 does not apply to benefits that are not salary and bonuses such as fringe benefits, insurance premiums or pension plans paid by a subrecipient and should not be included in the calculation.

Per DOL's ETA Region 6 Office, the salary and bonus limit applies to both the gross amount of salary and bonus, and to the rate at which the salary is paid. As a result, for individuals who do not work full time on ETA funded projects or who are only employed part time or part of the year, the salary and bonus limit will be prorated based on the amount of time the individual is dedicated to the ETA funded grant.

All subrecipients of WIOA program funds are required to comply with federal requirements regarding the limitations on salary and bonus payments. Additionally, subrecipients are required to follow the instructions for implementing the salary and bonus limitations as provided in TEGL 05-06.

IV. PROCEDURE

The Employment and Economic Development Department shall ensure compliance with this Federal mandate by ensuring that all subrecipients who are recipients of WIOA funds:

1. Procurement and Contractual Agreements

It shall incorporate language in its procurement and contractual instruments to make sure that potential service providers and subrecipients understand these conditions.

2. Subrecipient Monitoring

Subrecipient monitoring activity will ensure compliance with Public Law 109-234, Section 7013 through the review of the necessary documentation.

3. Technical Assistance and Training

The Grants Management Division shall conduct orientation, training and technical assistance to ensure that its WIOA subrecipients understand the WIOA Federal and State rules, regulations and mandates.

V. QUESTIONS REGARDING THIS DIRECTIVE

All questions regarding this directive should be directed to the Administrative Entity/Fiscal Agent.

VI. UPDATE RESPONSIBILITY

The Executive Director of EEDD and/or designee shall be responsible for updating this directive, as appropriate.

VII. APPROVED



PATRICIA VIRGEN
EXECUTIVE DIRECTOR

PV:tl

SALARY AND BONUS LIMITATIONS FOR 2023

EXECUTIVE SUMMARY

This policy provides the guidance and establishes the procedures regarding the 2023 salary and bonus limitations for individuals paid by funds appropriated to the Department of Labor (DOL) Employment and Training Administration (ETA). This policy applies to all subrecipients expending *Workforce Innovation and Opportunity Act (WIOA)* program funds. The 2023 salary rates for executive level employees are effective January 1, 2023.

This policy contains no state-imposed requirements. All state-imposed requirements are indicated by ***bold, italic*** type.

This Directive finalizes Workforce Services Draft Directive *Salary and Bonus Limitations for 2023* (WSD22-242), issued for comment on February 3, 2023. The Workforce Development Community submitted no comments during the draft comment period.

This policy supersedes Workforce Services Directive *Salary and Bonus Limitations for 2022* (WSD21-07), dated June 23, 2022. Retain this Directive until further notice.

REFERENCES

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- *Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006* (Public Law 109-234), Title VII, Section 7013
 - Title 2 *Code of Federal Regulations* (CFR) part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)
 - Training and Employment Guidance Letter (TEGL) 05-06, *Implementing the Salary and Bonus Limitations in Public Law 109-234* (August 15, 2006)
 - United States Office of Personnel Management, *2023 Rates of Basic Pay for the Executive Schedule*

The EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

BACKGROUND

On June 15, 2006, President Bush signed into law an emergency appropriations bill, Public Law 109-234. Section 7013 of this law limits the salary and bonus compensation for individuals paid by funds appropriated to the DOL ETA and provided to recipients and subrecipients. Specifically, section 7013 states the following:

“None of the funds appropriated in Public Law 109-149 or prior acts under the heading ‘Employment and Training Administration’ that are available for expenditure on or after the date of enactment of this section 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 the Office of Management and Budget (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 subrecipients of such funds, considering 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 organization that administers federal programs involved including Employment and Training Administration programs.”

As a result of this law, the DOL ETA issued [TEGL 05-06](#) on August 15, 2006. This TEGL discusses the limitations on salary and bonus payments allowable with funds appropriated to the DOL ETA. Specifically, this TEGL provides information on programs impacted by this provision, effective dates and funding cycles, covered individuals and transactions, application of the limitation, and related grant and contract modifications.

*Note – the OMB Circular A-133 referenced above was replaced by the Uniform Guidance.

POLICY AND PROCEDURES

Public Law 109-234 sets the limit on salary and bonus compensation for individuals paid by funds appropriated to the DOL ETA at a rate equivalent to no more than Executive Level II. These levels are adjusted annually and are listed on the federal [Office of Personnel Management](#) website. Salary Table No. 2023-EX provides the [2023 Rates and Basic Pay for the Executive Schedule](#).

All subrecipients of WIOA program funds are required to comply with federal requirements regarding the limitations on salary and bonus payments. Additionally, subrecipients are required to follow the instructions for implementing the salary and bonus limitations as provided in TEGL 05-06.

Effective January 1, 2023, the salary and bonus limit is set to \$212,100. These limitations do not apply to benefits that are not salary and bonuses. For example, fringe benefits, insurance

premiums, or pension plans paid by a subrecipient are not included in this calculation. Per the DOLs ETA Region 6 Office, the salary and bonus limit applies to both the gross amount of salary and bonus, and to the rate at which the salary is paid. As a result, for individuals who do not work full-time on DOL ETA funded projects or who are only employed part-time or part of the year, the salary and bonus limit will be prorated based on the amount of time the individual is dedicated to the DOL ETA funded grant. The following examples, provided by the DOL ETA Region 6, illustrate how the limitations are calculated based on salary and bonus levels, as well as the rate at which they are paid:

Example 1

An Executive Director’s W-2 for 2023 includes \$173,500 of gross compensation. The Executive Director worked part-time (.50 Full Time Equivalent [FTE]) all year. One hundred percent of the Executive Director’s salary costs benefited DOL ETA-funded programs.

| Example 1 Calculations | Total |
|--|------------------|
| 2023 Salary and Bonus Limit | \$212,100 |
| Salary eligible for the salary and bonus limit .50 FTE x 100% of salary = 50% (Calculation: \$212,100 x 50%) | \$106,050 |
| Total gross compensation | \$173,500 |
| Salary costs benefitting DOL ETA-funded programs (Calculation: \$173,500 x 100%) | \$173,500 |
| Salary in excess of the salary and bonus limit (Calculation: \$173,500 - \$106,050) | \$67,450 |

In this scenario, the Executive Director’s salary is eligible for 50 percent of the annual salary and bonus limit (.50 FTE x 100% of his salary benefited DOL ETA-funded programs). Therefore, \$106,050 ($\$212,100 \times 50\% = \$106,050$) of the salary may be paid using DOL ETA appropriated funds or other federal funds. The remaining \$67,450 ($\$173,500 - \$106,050 = \$67,450$) of the salary is in excess of the allowable 2023 salary and bonus limit and must therefore be paid using non-federal funds.

Example 2

An Executive Director’s W-2 for 2023 includes \$173,500 of gross compensation. The Executive Director worked part-time (.50 FTE) all year. Seventy percent of the Executive Director’s salary costs benefited DOL ETA-funded programs.

| Example 2 Calculations | Total |
|------------------------------------|------------------|
| 2023 Salary and Bonus Limit | \$212,100 |

| Example 2 Calculations | Total |
|---|--------------|
| Salary eligible for the salary and bonus limit .50 FTE x 70% of salary = 35% (Calculation: \$212,100 x 35%) | \$74,235 |
| Total gross compensation | \$173,500 |
| Salary costs benefitting DOL ETA-funded programs (Calculation: \$173,500 x 70%) | \$121,450 |
| Salary in excess of the salary and bonus limit (Calculation: \$121,450 - \$74,235) | \$47,215 |

In this scenario, the Executive Director’s salary is eligible for 35 percent of the annual salary and bonus limit (.50 FTE x 70% of his salary benefited DOL ETA-funded programs). Therefore, \$74,235 ($\$212,100 \times 35\% = \$74,235$) of the salary may be paid using DOL ETA appropriated funds or other federal funds. Since only 70 percent of the Executive Director’s salary costs benefited DOL ETA-funded programs, the remaining amount of \$47,215 ($\$173,500 \times 70\% = \$121,450 - \$74,235 = \$47,215$), which is in excess of the allowable 2023 salary and bonus limit, must be paid using non-federal funds.

Example 3

An Executive Director’s W-2 for 2023 includes \$210,000 of gross compensation. The Executive Director worked full-time all year. Forty percent of the Executive Director’s salary costs benefited DOL ETA-funded programs. In this example, the Executive Director’s eligible salary does not exceed the 2023 salary and bonus limit.

| Example 3 Calculations | Total |
|--|------------------|
| 2023 Salary and Bonus Limit | \$212,100 |
| Salary eligible for the salary and bonus limit (Calculation: \$212,100 x 40%) | \$84,840 |
| Total gross compensation | \$210,000 |
| Salary costs benefitting DOL ETA-funded programs (Calculation: \$210,000 x 40%) | \$84,000 |
| Salary in excess of the salary and bonus limit (Calculation: \$84,000 - \$84,840) | \$0 |

In this scenario, the Executive Director’s salary is eligible for 40 percent of the annual salary and bonus limit (40% of his salary benefited DOL ETA-funded programs). Therefore, \$84,840 ($\$212,100 \times 40\% = \$84,840$) of the salary may be paid using DOL ETA appropriated funds or other federal funds. While only 40 percent, or \$84,000 of the Executive Director’s salary costs benefited DOL ETA-funded programs, the amount is below the allowable 2023 salary and bonus limit of \$84,840, there is no excess of the salary and bonus limit which is represented by \$0 in the above Table, resulting in no need for any supplemental non-federal funds.

ACTION

Bring this Directive to the attention of all affected staff and subrecipients.

INQUIRIES

If you have any questions, contact [Regional Advisor](#).

/s/ JAVIER ROMERO, Deputy Director
Workforce Services Branch

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| EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210 | CLASSIFICATION Workforce Investment System – System Wide |
| | CORRESPONDENCE SYMBOL OPDR |
| | DATE August 15, 2006 |

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 5-06

TO: ALL EMPLOYMENT AND TRAINING ADMINISTRATION (ETA)
GRANTEES, CONTRACTORS AND OTHER RECIPIENTS OF ETA
APPROPRIATED FUNDS

FROM: EMILY STOVER DeROCCO /s/
Assistant Secretary

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

1. Purpose. To inform states and other Employment and Training Administration (ETA)-fund recipients and sub-recipients of a new limitation on salary and bonus payments that can be made with funds appropriated to ETA and provide guidance on implementing this new provision.
2. References. Pub. Law 109-234
3. 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 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 States are recipients of such funds, States 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.

4. Policy Guidance. This policy guidance provides the 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.

5. 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 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 as described in this TEGP 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. Examples of such programs include activities funded through the WIRED Initiative and some High Growth Job Training Initiative grants.

The limitation also 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.

WIA incentive grants financed only through Department of Education appropriations are not covered by this limitation.

Public law 109-234 specifically states that it does not change the limitations that Public Law 109-149 section 101 previously set for individuals paid through the Job Corps program. These limitations are still in effect. Questions concerning the applicability of the new provision to any Job Corps funds should be directed to Job Corps officials.

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

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| RESCISSIONS | EXPIRATION DATE Continuing |
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restrictive than the limitations in Public Law 109-234, when broken down as an hourly rate, and will continue to apply.

6. 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.
7. 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.

8. 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. 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.

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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 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.

When states are the recipients of the funds, states can set a limit below Executive Level II for salaries paid by sub-recipients. However, states should take the factors listed in section 7013 into account when re-designating the limit.

9. Grant and Contract Modifications. Please be advised ETA will modify appropriate grants and contracts to conform to the new requirements of Public Law 109-234.
10. Action Required. All recipients of ETA appropriated funds should become familiar with the requirements of Public Law 109-234. States shall inform all staff, sub-recipients (sub-grantees and contractors) and Local Workforce Investment Boards of the contents of these instructions. Discretionary grantees should similarly familiarize themselves, their sub-recipients (sub-grantees and sub-contractors) 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, June 15, 2006.
11. Inquiries. States, discretionary grantees and other ETA appropriated fund recipients should direct all inquiries to their Grant Officer, Contract Officer or Federal Project Officer.

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