

TEXAS WORKFORCE COMMISSION LETTER

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| ID/No: | WD 24-07, Change 1 |
| Date: | October 5, 2007 |
| Keyword: | Administration; ES; TAA; WIA |
| Effective: | Immediately |

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



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

Subject: **Reasonableness of Personnel Compensation: Clarification and Additional Guidelines—Update**

PURPOSE:

To provide Local Workforce Development Boards (Boards) with **updated** clarification and additional guidelines on the application of certain policies relating to the reasonableness of **Board-level** personnel compensation, specifically:

- salaries and wages;
- fringe benefits (including car allowances); and
- severance pay.

CHANGES TO WD LETTER 24-07:

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:

Federal and state cost principles set forth requirements for the allowability of personnel compensation. One factor contributing to the allowability of such costs is whether such costs meet reasonableness criteria set forth in those cost principles. To assist in the evaluation of the reasonableness of Board-level compensation, the Texas Workforce Commission (Commission) has developed the benchmarks listed in Attachment 1.

Reasonableness

The reasonableness criteria apply to all costs, including those for personnel compensation. As stated in the ~~Texas Workforce Commission's (Commission)~~

Financial Manual for Grants and Contracts (FMGC) §8.1, consideration must be given to the following when determining whether a cost is reasonable:

- i. *whether it is a type of cost that is generally recognized as ordinary and necessary for the operation of the organization or the performance of the award;*
- ii. *restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; federal, state, and other laws and regulations; and terms and conditions of the award;*
- iii. *market prices for comparable goods or services;*
- iv. *whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its employees, the public at large, and the federal or state government; and*
- v. *significant deviations from the established practices of the organization which may unjustifiably increase the award's cost.*

Personnel Compensation

In accordance with FMGC §10.2, personnel compensation includes all remuneration, paid or currently accrued, for services rendered during the period of performance under federal or state awards, including but not necessarily limited to wages, salaries, and fringe benefits. Such costs are allowable to the extent that they satisfy the requirements of applicable cost principles and that total compensation for individual employees:

- is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both federal and non-federal activities; and
- is determined and supported consistent with requirements of applicable cost principles.

Salaries and Wages

Section 6.13, Part 6, Article IX, General Appropriations Act, 79th Texas Legislature, Regular Session, requires Board compliance with Parts 2 and 3 of Article IX. Part 2 sets forth provisions pertaining to position classification and salary schedules that limit annual salary rates. Part 3 sets forth other administrative and employment provisions. These requirements provide the Commission with the basis for setting benchmarks for what may be considered reasonable costs for benefits and severance pay. **(Note: The requirements established under the legislation above continue to apply under the General Appropriations Act, 80th Legislature, Regular Session, and will continue to apply in subsequent years unless future legislation requires otherwise.)**

The Commission also applies the guidance in U.S. 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," which provides information on how to implement the salary and bonus payment limitations enacted by Public Law (PL) 109-234. Section 7013 of PL 109-234 limits salary and bonus compensation for individuals who are paid by funds

appropriated to the U.S. Department of Labor Employment and Training Administration and provided to recipients and subrecipients. The limitations apply to funds available beginning on June 15, 2006. The Commission will issue further comment guidance on PL 109-234.

Fringe Benefits (including Car Allowances)

Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages as set forth in Part 3, Article IX, General Appropriations Act, 79th Texas Legislature, Regular Session, **and the cited authorities under FMGC §8.3.13**. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. For the Commission's purposes, fringe benefits also include car allowances. Except as provided elsewhere in cost principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by:

- law;
- employer-employee agreement; or
- established policy of the organization.

An *employer-employee agreement* is an agreement entered into by an employer and an individual employee at the start of the employment relationship that sets forth the terms of employment with the employer. An agreement that is made when employment is terminated does not constitute an employer-employee agreement for these purposes.

(Note: The requirements established under the legislation above continue to apply under the General Appropriations Act, 80th Legislature, Regular Session, and will continue to apply in subsequent years unless future legislation requires otherwise.)

Severance Pay

Texas Attorney General Opinion No. JC-0221, dated May 22, 2000, defines "severance pay" as compensation paid by an employer to an employee beyond his or her wages upon an early termination of the employment relationship by the employer. Whether amounts paid in any particular case are severance payments will depend on the termination agreement and the surrounding factual circumstances. Such payments are allowable to the extent that they are required by:

- law;
- an employer-employee agreement (**as described above**); or
- an organization's established policy.

PROCEDURES:

General

Boards must ensure that **Board-level** personnel compensation, including salaries and wages, fringe benefits, and severance pay, is reasonable in accordance with:

- Office of Management and Budget (OMB) Circulars;
- Uniform Grant Management Standards (UGMS);
- FMGC; and
- Boards' written policies and procedures, or an employer-employee agreement.

NLF

Boards must be aware that the Commission will consider the benchmarks listed in Attachment 1 and other relevant factors and justification demonstrated by the Boards when determining whether Board-level personnel compensation, policies and procedures, and/or employer-employee agreements conform to requirements set forth by OMB Circulars, UGMS, and FMGC.

NLF

Employer-Employee Agreements

Boards are not required to establish employer-employee agreements with their employees, but may enter such agreements in addition to having written policies and procedures that describe their policies for personnel compensation. Entering into an employer-employee agreement is a Board discretionary matter.

LF

If a Board executes an employer-employee agreement, the Board must determine whether the agreement is reasonably necessary, depending on the specific circumstances.

NLF

Boards must ensure that:

- written policies and procedures that describe the Board's personnel compensation policies are in place regardless of whether the Board also chooses to execute an employer-employee agreement;
- the decision to execute an employer-employee agreement is reasonably necessary before entering into an agreement;
- the terms of an employer-employee agreement are reasonable; and
- personnel compensation that is not made pursuant to law, written policies and procedures, or an employer-employee agreement does not result in disallowed costs.

NLF

Fringe Benefits

Boards may establish different benefit plans for different groups of employees. For example, a Board may establish one benefit plan for its executive management and a separate plan for other employees.

LF

However, Boards must ensure that such benefit plans meet the criteria in Office of Management and Budget Circulars, Uniform Grant Management Standards, FMGC, and WD Letters.

NLF

INQUIRIES:

Direct inquiries regarding this WD Letter to the assigned contract manager for your local workforce development area.

ATTACHMENT:

Attachment 1: Personnel Compensation Benchmarks

RESCISSIONS:

**TA Bulletin 155
WD Letter 24-07**

REFERENCE:

Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234) §7013
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>)
Office of Management and Budget Circular A-21: Cost Principles for Educational Institutions
Office of Management and Budget Circular A-87: Cost Principles for State, Local, and Indian Tribal Governments
Office of Management and Budget Circular A-122: Cost Principles for Non-Profit Organizations
General Appropriations Act, 79th Texas Legislature, Regular Session, Article IX, Parts 2 and 3, and §6.13
Texas Attorney General Opinion No. JC-0221, dated May 22, 2000
Texas Workforce Commission Financial Manual for Grants and Contracts, §8.1, §8.3, §10.1, and §10.2
WD Letter 28-07, issued September 5, 2007, and entitled "Limitations on Salaries and Bonuses Paid with Workforce Investment Act and Wagner-Peyser Funds"
~~Technical Assistance Bulletin 155, issued September 5, 2007, and entitled "Reasonableness of Personnel Compensation"~~

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."