Department of Economic Opportunity
Work Experience for Summer Youth Participants
And Issues related to the Payment of Wages and Stipends

Background:

The Workforce Investment Act (WIA) includes work experience as an intensive service activity for both adults and youth. Work experience should be based on an assessment or individual employment plan. Work experiences are planned, structured learning experiences that occur in a workplace for a limited period of time. As provided in WIA section 129(c)(2)(D) and 20 CFR § 664.470, work experiences may be paid or unpaid. Work experience sites may be in the public, private, for-profit or non-profit sectors. Funds under WIA may be used to pay wages and related benefits for work experience in each of those sectors where the objective assessment and individual service strategy indicate that work experiences are appropriate.

Summer youth employment is a work experience activity. Although summer employment programs have always been an allowable activity under the WIA Youth Program, with limited exception, most of the available regular formula youth funding has supported local year-round programs and not summer employment programs.

The USDOL program guidance (TEGL 14-08) addresses the design and implementation of summer employment programs. The guidance states the following:

- **Work experience is the core component of a summer employment program**.
- **All states and local areas should ensure that participating worksites introduce and reinforce the rigors, demands, rewards, and sanctions associated with holding a job.**
- **Provisions for wages under the amendments to the Fair Labor Standards Act (FLSA) apply to all youth participants employed under WIA.**
- **Depending on the facts, FLSA regulations may apply only to the workplace portion, and not to the classroom portion, of summer employment. Any hours spent in classroom training as part of a summer employment opportunity may or may not fall under the FLSA**.

Regional workforce boards have the option of including a classroom component to its summer youth program. Usually, this is done to provide the younger age group the opportunity to further their academic skills. This would likely be less appropriate for the older youth.

Discussion:

The issue of paying wages or stipends to youth participating in a summer employment program (and what impact that has on the tax liability of the participant, the worksite

employer, and the regional board) has existed as long as summer employment programs have been federally funded. The Department has determined that each circumstance must be evaluated on a case-by-case basis, applying the factors discussed below.

Over the years, the IRS has been consistent in stating that the tax treatment of payments (wages or stipends) made under a federally sponsored work-training program depends upon the particular factual situation. In general, the IRS has provided the following guidance:

- Tax liability rests upon whether the participants are "employees" and whether the payments should be considered "wages." Typically, an employer-employee relationship will exist if the employer has the right to control, direct and discharge the employee and if the employee receives compensation according to the general rate structure.

- Additional factors to consider include:

    - Whether the participants perform services. If so, income and employment taxes probably apply;
    - The amount of training provided. Even if some training is provided, the payments still may be taxable;
    - Whether payment is made for welfare purposes and measured according to the personal or family needs of the individual. If so, income and employer taxes do not apply.

The U.S. Departments of Education and Labor published a guide entitled "School-to-Work Opportunities and the Fair Labor Standards Act: A Guide to Work-Based Learning, Federal Child Labor Laws, and Minimum Wage Provisions" that includes the following guidance:

- Are all work-based learning experiences subject to the FLSA?

    - No. Activities occurring in the workplace that do not involve the performance of work are not "employment" subject to the Fair Labor Standards Act. Examples of this include:

        - Career awareness and exploration;
        - Field trips to a worksite;
        - Job shadowing

- When is a learning experience not employment, as defined by FLSA?

    - A participant would not be considered an employee within the meaning of FLSA if ***all*** of the following criteria are met:

- The participant receives ongoing instruction at the employer's worksite and receives close, on-site supervision throughout the learning experience, with the result that any productive work that the participant would perform would be offset by the burden to the employer from the training and supervision provided; and,
- The placement of the participant at a worksite does not result in the displacement of any regular employee i.e., the presence of the participant at the worksite cannot result in an employee being laid off, cannot result in the employer not hiring an employee it would otherwise hire, and cannot result in an employee working fewer hours than he or she would otherwise work; and,
- The participant is not entitled to a job at the completion of the work experience – but this does not mean that employers are to be discouraged from offering employment to participants who successfully complete the activity; and,
- The employer, participant, and parent or guardian understands that the participant is not entitled to wages or other compensation for the time spent in the work experience activity (although the participant may be paid a stipend for expenses such as books or tools).

  - When all four of the above criteria are met, an employer would not be required to pay wages to the participant.

- What does it mean if a learning/work experience is not subject to FLSA?

  - It means that the participant is not an employee and wages are not paid. Payment of a stipend is optional. However, a stipend may not be used as a substitute for wages. A stipend is generally limited to reimbursement for expenses such as books, tuition, or tools.

Conclusions:

In TEGL 14-08, the USDOL states that "**wage requirements under the Fair Labor Standards Act (FLSA) apply to all youth employed under WIA.**" The FLSA applies to the extent that the activities performed in the work experience constitute employment. Local boards must determine whether work experience constitutes training as opposed to employment. The guidance offered in "School-to-Work Opportunities and the Fair Labor Standards Act: A Guide to Work-Based Learning, Federal Child Labor Laws, and Minimum Wage Provisions" published by the U.S. Departments of Education and Labor can be used to help determine if the summer youth program constitutes training as opposed to employment. Boards should also consider the factors cited by the IRS when determining whether the payments (wages or stipends) made to participants in a summer youth program are taxable.

If the worksite is relying on the participant to perform real work, i.e., to be productive, an employer-employee relationship probably exists. In this situation, there must be an employer of record and participants must receive no less than the applicable state or federal minimum wage, related benefits are required, and payroll taxes should be deducted. The employer of record will be responsible for paying all taxes.

Incentives or stipends may be used in a training situation and are determined by the local board. Stipends should be issued through a uniform payment system. Such incentives are not required to meet minimum wage requirements, are not to be disbursed as payroll, and income tax is not to be withheld. However, a stipend may not be used as a substitute for wages and is generally limited to reimbursement for expenses such as books, tuition, or tools.

Recommendations:

This guidance is intended to explain some of the factors that RWBs should consider when determining whether to pay summer youth participants a wage or a stipend and when determining whether those payments are subject to income and employment taxes. The IRS has not issued definitive guidance and has ruled that each determination is based on particular factual situations.

We recognize that some regional boards may design their summer youth programs (particularly for the younger youth) as more of an academic classroom situation where stipends may be appropriate. Each individual regional workforce board is responsible for making the ultimate determination of whether an employer-employee relationship exists based on the particular facts of each situation.