

The Continuing Saga of the Ceiling on Government Contractor Compensation

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Congress first “capped” Executive Compensation for Defense Contractors in 1995 using a Benchmark set by the Office of Federal Procurement Policy (OFPP). The Benchmark is calculated each year and represents the median of total compensation paid to the top five employees at each home office and segment of all U.S. public companies with more than \$50 million in revenues.

The 1995 cap was \$250,000, applied solely to the top five executives in each company, and only limited allowability on Defense contracts. In 1998, Congress broadened the cap to limit allowability on all Federal contracts, not just those of DoD, but it still applied exclusively to the top five executives.

The provision was problematic almost from the beginning. The Benchmark (or, simply, “the cap”) rose much faster than inflation and by 2010 was almost \$700k. In addition, the sixth highest paid executive in a company was often paid considerably more than the cap and, in many cases, comparison to salary survey data showed it was reasonable. This situation persisted until 2012.

The 2012 version of the National Defense Authorization Act (NDAA) modified the section of the U.S. Code in which the cap is implemented, to broaden it to apply to any contractor employee whose compensation costs are allocable to contracts with DoD, NASA, or the U.S. Coast Guard. For other agencies, the cap still applies only to the five most highly compensated employees in home offices or segments that report to a contractor’s home office. Despite legislative efforts to change the cap itself, it continues to be tied to the OFPP Executive Compensation Benchmark, which is \$763,029 for cost incurred on or after January 1, 2011.

The current benchmark may be verified at the web site of the Office of Management and Budget at http://www.whitehouse.gov/omb/procurement_index_exec_comp.

The most recent cap was published in the Federal Register more than a year late, on April 23, 2012. Notwithstanding the tardiness, the cap applies retroactively to all of 2011. The cap for 2012 was actually due by the time the 2011 cap was published and is now more than a year and a half overdue. Doubtless, when it is published, it will also be retroactive and apply to all costs incurred on or after January 1, 2012. The Administrator of the OFPP, Joe Jordan, stated in a post to his official OMB Blog on May 30, 2013, that the next increase would be to more than \$950k. Of course, he also said the cap would be updated in the “coming weeks.” That was more than three months ago.

Both the House and the Senate continue to float proposals in various legislative vehicles to tie the cap to the President’s salary, the Vice President’s salary or the salaries of the Cabinet Secretaries. None have been successful so far, but it is probably just a matter of time.

Stay tuned.