

OFPP Issues FY 2012 Executive Compensation Benchmark/Ceiling

Written by Nick Sanders
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Section 39 of the Office of Federal Procurement Policy (OFPP) Act requires the OFPP to issue, annually, an executive compensation “benchmark” amount that establishes an allowability ceiling on compensation of contractor executives. The benchmark amount is set at the median (50th percentile) amount of compensation over a recent 12-month period for the five most highly compensated employees in management positions at each home office and each segment of all publicly-owned companies with annual sales over \$50 million, and the determination is based on analysis of data made available by the Securities and Exchange Commission (SEC). As defined by the Cost Principles at FAR 31.205-6(p), executive compensation means the total amount of wages, salaries, bonuses, restricted stock, deferred and performance incentive compensation, and other compensation for the year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the year. For government contractors, executive compensation in excess of the annual OFPP benchmark/ceiling amount is unallowable. Period.

We have previously noted that Section 803 of the FY 2012 NDAA extended the executive compensation cap beyond the “top 5” most highly compensated executives in each segment, to apply to all contractor employees. Further, we have also [reported](#) a proposed rule change to the FAR Cost Principle on Compensation that would implement that statutory direction. It was problematic in several respects, as we noted.

The FY 2011 ceiling amount of executive compensation was \$763,209.

The FY 2012 ceiling amount is \$952,308.

The [Federal Register notice](#) provided ample evidence that the OFPP disagrees with the statutory formula it is required to follow. In a Memorandum published along with the new ceiling amount, OFPP Administrator Joseph Jordan opined—

When the cap was raised to \$693,951 for Fiscal Year (FY) 2010, the President called on Congress to repeal the current statutory formula and replace it with a lower, more sensible limit that is on par with what the Government pays its own executives and employees. Over the last several years, the Administration has strongly reiterated the need for reforms to the current statutory framework and Congress has considered several proposals to reform the compensation cap. To date, however, Congress has not revised the cap amount or the formula for adjusting the cap. Instead, Congress made only a modest change that expanded

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application of the statutory cap on defense contracts from the contractor's senior executives to all of its employees (section 803 of the National Defense Authorization Act for FY 2013, Pub. L. 112-81, December 31, 2011). This expansion of the applicability of the cap to all contractor employees did not cover contracts with the civilian agencies, so the cap for those contracts remains applicable only to certain contractor senior executives, which is defined as the five most highly compensated employees in management positions at each home office and each segment of the contractor.

OFFPP Administrator Jordan then availed himself of the opportunity to ask Congress, again, via the Federal Register (as opposed to, you know, sending a letter) to lower the statutory formula to match the President's annual salary (current \$400,000).

We here at Apogee Consulting, Inc. believe that OFFPP Administrator Jordan has not gone far enough. Not only should Congress cap the allowability of contractor salaries at \$400,000, it should also cap the tax deductibility of all compensation, received by any individual in America, at that same that limit. Brad Pitt and Angelina Jolie should have their actor compensation limits set at \$400,000, with respect to tax deductible film production expenses. Larry Ellison should have his Oracle salary limited to \$400,000, with respect to Oracle's corporate tax deductions. Nobody on Wall Street should be allowed to treat compensation in excess of \$400,000 as a tax deductible expense.

Basically, if you are going to interfere in the free market, why not go all the way and just implement top-down, centralized, compensation limits (with respect to tax deductibility, of course). It should be obvious that nobody adds any more value to the American economy than the President of the United States of America. So let's take that notion and enforce it across the board! After all, nobody is limiting the amount of compensation that may be paid; the only limits would be on the tax deductibility of that compensation.

And let's see how all those corporate and Wall Street contributors to Congressional campaigns react to that initiative, shall we?

Getting back to contractor compensation allowability, we note (for the record) that once again the OFFPP is late issuing its benchmark ceiling. Most contractors have already submitted their FY 2012 proposals and retroactively implementing the new amount would be expensive.

Perhaps OFFPP Administrator Jordan would be better served ranting less about the law he and

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his staff are required to follow, and working harder to ensure that they follow the law within a reasonable timeframe?