

## **Contractor Compensation Cap for Contracts Awarded Before June 24, 2014**

### **Overview of Statutory Formula Cap on Allowable Benchmark Amount**

The allowability of the compensation costs for the senior executives of Government contractors is capped by statute ([10 U.S.C. 2324\(e\)\(1\)\(P\)](#) and [41 U.S.C. 4304\(a\)\(16\)](#)), both as in effect prior to June 24, 2014) at a benchmark compensation cap amount determined in accordance with a statutory formula.

### **Determination of the Statutory Formula Cap Amount**

The Administrator, Office of Federal Procurement Policy, (OFPP), determines the benchmark compensation amount as required by Section 39 of the OFPP Act, as amended ([41 U.S.C. 1127](#), as in effect prior to June 24, 2014). The benchmark amount applicable for a fiscal year is determined in accordance with a statutory formula; it is the median amount of the compensation provided for all senior executives of all benchmark corporations per commercially available surveys for the most recent year for which data is available at the time the OFPP Administrator determines the amount. The data used is the median (50th percentile) amount of compensation (total amount of wages, salary, bonuses and deferred compensation) accrued over a recent 12-month period for the top five highest paid employees in management positions at each home office and each segment of publicly traded U.S. companies with annual sales over \$50 million. Once a benchmark compensation amount, otherwise known as the section 1127 statutory formula cap amount, is established for a fiscal year, it is applicable for that fiscal year for a contractor, and for subsequent fiscal years, unless and until revised by OFPP.

The statutory formula cap amount for a fiscal year as determined by the OFPP Administrator applies to limit the reimbursement of the contractor's allowable compensation costs incurred after a stated date. If the contractor's fiscal year does not coincide with the fiscal year for the statutory formula cap amount as determined by OFPP (i.e., the calendar year), the benchmark compensation amount as determined by OFPP is adjusted for the contractor's fiscal year. To adjust for the contractor's fiscal year when it is other than the calendar year, the statutory formula cap amount for each of the two calendar years straddled by the contractor's fiscal year are pro-rated for the contractor's fiscal year. The sum of the pro-rata portions of the OFPP determined statutory formula cap amounts for the two calendar years straddled by the contractor's fiscal year is the benchmark compensation statutory formula cap amount, as adjusted for the contractor's fiscal year, applicable to the contractor's contracts. The benchmark compensation statutory formula cap amount, as adjusted for the contractor's fiscal year, is applicable to limit the reimbursement of the contractor's allowable compensation costs on applicable contracts.

### **Application to Senior Executives**

The reimbursement of the compensation costs for certain senior executives of the contractor are subject to the section 1127 statutory formula cap amount. The statutory definition of 'senior executive' has changed over time. Prior to January 2, 1999, 'senior executive' means the Chief Executive Officer (CEO) or any individual acting in a similar capacity at the contractor's headquarters; the four most highly compensated employees in management positions at the contractor's headquarters, other than the CEO; and if the contractor has intermediate home offices or segments that report directly to the contractor's headquarters, the five most highly

compensated employees in management positions at each such intermediate home office or segment. Effective January 2, 1999, ‘senior executive’ means the five most highly compensated employees in management positions at each home office and each segment of the contractor, whether or not the home or segment reports directly to the contractor’s headquarters.

The section 1127 statutory formula cap amount, as determined annually by OFPP, is the cap on the reimbursement of the allowable compensation costs for certain senior executives incurred on contracts awarded by the civilian agencies (other than the Department of Defense – DOD, National Aeronautics and Space Administration – NASA, and Coast Guard – CG) prior to June 24, 2014; the same statutory formula cap amount also limits the reimbursement of the allowable compensation costs for certain senior executives incurred on contracts awarded by DOD, NASA, and CG, but only on those contracts awarded prior to December 31, 2011 (rather than June 24, 2014 as for the civilian agencies). The section 1127 statutory formula cap is implemented at [FAR 31.205-6\(p\)\(1\)](#) for senior executives for contracts with executive agencies.

### **Application to All Contractor Employees**

Section 803 of the National Defense Authorization Act FY 2012 increased the number of contractor employee whose allowable compensation costs were limited by the statutory formula cap for contracts with DOD, NASA, and CG (but not for contracts with the civilian agencies).

The same statutory formula cap amount that limited the reimbursement of the allowable compensation costs for certain senior executives on contracts with the executive agencies was expanded to limit the reimbursement of the allowable compensation costs for ALL contractor employees, which includes senior executives, incurred on DOD, NASA, and CG contracts awarded on or after December 31, 2011, and before June 24, 2014. The section 1127 statutory formula cap is implemented at [FAR 31.205-6\(p\)\(2\)](#) for all contractor employees on contracts with DOD, NASA, and CG. Along with the expansion of the coverage of the statutory formula cap to all employees, the statutory gave the Secretary of Defense the discretionary authority to establish one or more narrowly targeted exceptions for scientists and engineers upon a determination that such exceptions are need to ensure that the Department of Defense has continued access to needed skills and capabilities.

### **Table of Statutory Formula Compensation Cap**

<b>Statutory Formula Cap Amount</b>	<b>Fiscal Year</b>	<b>For Costs Incurred After</b>	<b>Federal Register Notice</b>	<b>FR Date Published</b>
\$1,144,888	2014	Jan 1, 2014	81 FR 13833	March 15, 2016
\$980,796	2013	Jan 1, 2013	81 FR 13833	March 15, 2016
\$952,308	2012	Jan 1, 2012	78 FR 72930	Dec 4, 2013
\$763,029	2011	Jan 1, 2011	77 FR 24226	Apr 23, 2012
\$693,951	2010	Jan 1, 2010	75 FR 19661	Apr 15, 2010
\$684,181	2009	Jan 1, 2009	74 FR 23893	May 21, 2009
\$612,196	2008	Jan 1, 2008	73 FR 15779	Mar 25, 2008
\$597,912	2007	Jan 1, 2007	72 FR 14300	Mar 27, 2007

\$546,689	2006	Jan 1, 2006	71 FR 26114	May 3, 2006
\$473,318	2005	Jan 1, 2005	70 FR 23888	May 5, 2005
\$432,851	2004	Jan 1, 2004	69 FR 26897	May 14, 2004