

Compensation limits applicable to government contractors

Date of Contract Award	Compensation Cap	Indirect Rates
Contracts awarded before 12/31/11	<p>Allowability cap set by OFPP, per Section 39 of OFPP Act (41 U.S.C. 1127). See http://www.whitehouse.gov/omb/procurement_index_exec_comp/ (e.g., FY11 cap was \$763,029, for costs incurred after January 1, 2011; FY12 cap is \$952,308, for costs incurred after January 1, 2012). The cap is implemented at FAR 31.205-6(p).</p> <p>Allowability cap is <i>applicable to the top five executives in each home office or segment</i> of the company. (Proposed regulations issued on June 26, 2013, would implement the 12/31/11 statutory change applying the cap to <i>all employees</i> retroactively for Department of Defense (DoD), NASA, and Coast Guard contracts, but the proposal acknowledges that such retroactive application, if adopted in a final rule, might be unenforceable on contracts awarded prior to 12/31/11.)</p>	One set of rates reflecting the allowability cap set under the OFPP Act is required and applies to all contracts.
Contracts awarded on or after 12/31/11 but before regulatory implementation of the BBA (see below)	<p>Section 803 of the FY12 National Defense Authorization Act (“NDAA”) expanded the OFPP cap (above) to apply to <i>all contractor employees</i> for costs charge on Department of Defense (“DoD”), NASA, and Coast Guard contracts. FAR 31.205-6(p) was revised effective June 26, 2013 to reflect this statutory change. As a result, the OFPP FY12 cap of \$952,308 applies to costs incurred after January 1, 2012 by the <i>top five executives in each home office or segment</i> of the company, for all federal government contracts, and purports to apply <i>all employees</i>, for work on DoD, NASA, and Coast Guard contracts. Whether the statutory change effective 12/31/11 may be applied retroactively to contracts awarded prior to 6/26/13, when the changes in the FAR cost allowability regulations were published, is unclear.</p>	<p>Multiple sets of rates may be needed to recover all allowable costs.</p> <ol style="list-style-type: none"> 1. Contractors with significant flexibly-price contracts with agencies other than DoD/NASA/ Coast Guard may want to prepare one set of rates for those contracts, applying the OFPP Act caps only to the top five executives. 2. Contractors with significant DoD/NASA/Coast Guard contracts will need to prepare incurred cost submissions that apply the OFPP caps to all employees for such contracts

		<p>awarded on/after 6/26/2013; to be safe those contractors may want to apply those same rates to all such contracts awarded after 12/31/11, as required by the 6/26/13 FAR changes.</p> <p>3. Contractors that disagree with retroactive application of the 6/26/13 FAR changes to contracts awarded prior to the date of those changes should consider filing a separate claim using higher rates that reflect the OFPP caps on DoD/NASA/Coast Guard contracts awarded prior to 6/26/13 for the difference in rates caused by the 6/26/13 regulatory changes.</p>
<p>Contracts awarded on or after regulatory implementation of the BBA (possibly 6/24/14)</p>	<p>The Bipartisan Budget Act of 2013 (“BBA”) repeals the compensation cap formula used by OFPP and sets a new initial allowable cost cap of \$487,000 for costs claimed on contracts <i>and subcontracts</i> awarded on or after 180 days after enactment (which will be June 24, 2014). This cap will be adjusted annually based on the Bureau of Labor Statistics’ Employment Cost Index.</p> <p>FAR 31.205-6(p) has not yet been revised to reflect this statutory change.</p>	<p>Depending on how the FAR cost principle is revised to implement the BBA, contractors will need at least one set of rates applying the \$487,000 cap for contracts awarded on or after implementation of the BBA. Assuming that the OFPP cap continues to apply to contracts awarded prior to the effective date of the FAR changes required by the BBA, another set of incurred rates would be required, using the higher cap, for as long as the contractor continues to incur material amounts of costs on older contracts subject to the higher OFPP cap. If there continue to be differences between coverage for old DOD/NASA/Coast Guard contracts and old contracts with other agencies, as</p>

		seems likely, one or more additional sets of incurred rates may be necessary for as long as such differences in contract coverage exist.
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