



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

June 5, 2013

The Honorable Joseph R. Biden
President of the Senate
Washington, DC 20515

Dear Mr. President:

Given the current fiscal environment, it is more important than ever that we ensure every taxpayer dollar is spent wisely. That is why the Administration is continuing its efforts to eliminate inefficient and wasteful spending across the Government, including in the area of Federal contracting. To build on these efforts, on behalf of the Administration, I am submitting to the Congress a legislative proposal to stop the excessive payments to Federal contractors that is required under current law. Enclosed with the proposal is a sectional analysis that describes the legislation.

Under current law, contractors who are paid based on their incurred costs may demand reimbursement for executive salaries, bonuses and other compensation up to the level of the Nation's top private sector chief executive officers and other senior executives. This taxpayer-reimbursed level, which is determined through a formula that is specified in law, has skyrocketed over 300 percent since the law's enactment in the mid-1990s. Taxpayers are required to foot this unaffordable expense, despite the fact that this rapidly increasing cost has little bearing on the value agencies receive under their Government contracts.


When the cap was raised to \$693,000 for FY 2010, the President called on Congress to repeal the current statutory formula and replace it with a lower, more sensible limit on par with what the Government pays its own executives and employees. Because the statutory formula for setting the cap remained unchanged, the Administration was forced to raise the cap to \$763,000 for FY 2011. In the coming weeks, because of the current law, the cap will need to be raised again for FY 2012 – this time to more than \$950,000 – continuing down a path of cap increases that is far outpacing the growth of inflation and the wages of most of America's working families.

The legislative proposal that the Administration is transmitting to the Congress would abolish the current unjustifiable formula. The proposal would instead tie the reimbursement cap to the President's salary and apply it across-the-board to all defense and civilian cost-reimbursement contracts. Tying the cap to the President's salary provides a reasonable level of compensation for high value Federal contractors while ensuring taxpayers are not saddled with paying excessive compensation costs.

Importantly, the proposal provides for an exemption to the cap if, and only if, an agency determines such additional payment is necessary to ensure it has access to the specialized skills required to support mission requirements, such as for certain key scientists or engineers. The proposal does not limit the amount contractors pay their executives or other employees. The cap only limits how much the government will reimburse the contractors for the services of these individuals.

I hope that the Congress will give prompt and favorable consideration to this proposal to restore fiscal responsibility before additional taxpayer dollars are wasted unnecessarily to pay for excessive contractor compensation.

Sincerely,

A handwritten signature in black ink, appearing to read "Sylvia M. Burwell". The signature is written in a cursive style with a large initial "S".

Sylvia M. Burwell
Director

Enclosures

Identical Letter Sent to Speaker of the House of Representatives

A BILL

To amend titles 10 and 41, United States Code, to revise and standardize the limitations on allowable costs under Government contracts for contractor compensation costs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIMITATION ON ALLOWABLE GOVERNMENT CONTRACTOR COMPENSATION COSTS.

(a) LIMITATION.—

(1) CIVILIAN CONTRACTS.—Paragraph (a)(16) of section 4304 of title 41, United States Code, is amended to read as follows:

“(16) Costs of compensation of any contractor employee for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds the annual amount paid to the President in accordance with section 102 of title 3, except that the head of an executive agency may establish one or more narrowly targeted exceptions for scientists, engineers, or other specialists upon a determination that such exceptions are needed to ensure that the executive agency has continued access to needed skills and capabilities.”.

(2) DEFENSE CONTRACTS.—Subparagraph (e)(1)(P) of section 2324 of title 10, United States Code, is amended to read as follows:

1 “(P) Costs of compensation of any contractor employees for a fiscal year,
2 regardless of the contract funding source, to the extent that such compensation
3 exceeds the annual amount paid to the President in accordance with section 102 of
4 title 3, except that the head of the agency may establish one or more narrowly
5 targeted exceptions for scientists, engineers, or other specialists upon a
6 determination that such exceptions are needed to ensure that the agency has
7 continued access to needed skills and capabilities.”.

8 (3) CONFORMING REPEAL OF DEFINITION NO LONGER USED.—Section 4301 of title
9 41, United States Code, is amended by striking paragraph (4).

10 (4) EFFECTIVE DATE.—The amendments made by this subsection shall apply with
11 respect to costs of compensation incurred under contracts entered into on or after the date
12 that is 180 days after the date of the enactment of this Act.

13 (b) CONFORMING AMENDMENT.—Section 1127 of title 41, United States Code, is
14 amended by adding at the end the following new subsection:

15 “(c) APPLICABILITY.—This section shall apply only with respect to costs of compensation
16 incurred under contracts entered into before the date that is 180 days after the date of the
17 enactment of this subsection.”.

Section-by-Section Analysis

SECTION 1. LIMITATION ON ALLOWABLE GOVERNMENT CONTRACTOR

COMPENSATION COSTS.

Replaces the formula for calculating the cap on the amount that the Federal Government will reimburse Federal contractors for executive compensation with a reimbursement cap equal to the amount paid to the President in accordance with section 102 of title 3, United States Code.

Extends to civilian contractors the reforms made for defense contractors in section 803 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Public Law 112-81). Those reforms broaden application of the cap for defense contractors from the contractor's senior-most executives to all contractor employees.

Permits executive agencies to exercise exceptions for other specialists based on the same determination. Changes made by the proposal would apply to costs of compensation under contracts entered into on or after 180 days after enactment of this Act.