

Employee Compensation Cap

ACYF Administration on Children, Youth and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration for Children and Families	
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PROGRAM INSTRUCTION:

TO: Head Start and Early Head Start Grantees and Delegate Agencies

SUBJECT: Employee Compensation Cap

INSTRUCTION:

The recently passed HHS appropriations bill contains a provision (Section 205) that requires that "none of the funds appropriated in this title for Head Start shall be used to pay the compensation of an individual, either as a direct cost or any proration as an indirect cost, at a rate in excess of Executive Level II." As of January, 2005, the rate of compensation for an Executive Level II employee is \$162,100 per year.

Every Head Start grantee and delegate is responsible for assuring its compliance with this provision. This provision applies to the salary and fringe benefits of any staff employed by a Head Start program who is paid, in whole or in part, with Head Start funds. Grantees may pay staff compensation rates that exceed \$162,100, but no Head Start funds can be used for any portion of that compensation which is in excess of this statutorily mandated cap. It should be noted that the compensation cap specified in Section 205 of the appropriations act is in addition to the requirements of Section 653 of the Head Start Act. Grantees are cautioned that failure to comply with either of these two requirements could lead to a finding of disallowed costs.

Each grantee, every fiscal year, must submit its annual refunding application. This application must demonstrate that no grant funds will be used to pay any staff compensation costs in excess of \$162,100 (for 2005). ACF Regional Offices (which for purposes of this Instruction include the American Indian-Alaska Native Branch and the Migrant and Seasonal Branch) will review each application to determine if the grantee is adhering to all statutory requirements, including those that govern staff compensation. Any grant proposal which raises questions about the grantee's compliance with this requirement will be discussed with the grantee and, as necessary, returned to the grantee for modification. ACF Regional Offices will monitor continued compliance with this requirement during PRISM on-site visits and through other data collection and analysis efforts, as appropriate. Head Start grantees are responsible for enforcing this requirement for all of their delegate agencies.

Each grantee will need to develop its own approach for assuring compliance with this compensation cap. Grantees should not need to conduct a detailed analysis of compliance for all staff as, in most agencies, few, if any, staff would receive compensation rates that approach the Executive Level II rate. Grantees should focus their analysis on executive, management and administrative staff; i.e. Executive Directors or their equivalent, Deputy Executive Directors, Head Start Directors, Special Assistants or any other position in which staff are being paid salaries that, taken together with fringe benefits, could approach the cap. Grantees may wish to, as one approach, assess all staff whose salary, when added to the grantee's average fringe benefit rate, would approach the Executive Level II compensation ceiling. A grantee, for example, with an average fringe benefit rate of 40% would want to look most carefully at staff with salaries in excess of approximately \$115,000. Grantees are reminded that the above discussion is intended only as a tool to help guide their efforts and that each grantee is responsible for establishing its own protocol which will assure compliance with the statutory ceiling on compensation paid from Head Start grant funds.

As noted above, compensation includes both salary and fringe benefits. The salary of an employee would include the employee's base salary, any overtime wages paid the employee and any bonuses paid the employee. Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, employer contributions or expenses for social security, employee insurance, workmen's compensation insurance and pension plan costs. In addition, some grantee staff may receive other forms of compensation such as, for example, a free vacation or free tickets to a sporting event. This type of compensation should also be included when determining an employee's total compensation.

It is important to emphasize that the cap on compensation applies to all staff which receive any part of their compensation package from Head Start grant funds. For staff which are fully funded from Head Start grant funds, implementation of the

cap is clear. These individuals may not receive compensation during the grantee's 2005-2006 budget year that exceeds the Executive Level II rate of \$162,100. For those whose compensation package is only partly paid from Head Start funds, grantees need to do the following:

Calculate what percentage of that individual's working hours, as determined through either a cost allocation plan or an approved indirect cost rate, is being paid for by Head Start. Multiply that percentage by \$162,100 – that is the maximum compensation this individual can be paid under Section 205 of the appropriations act. To further illustrate this point, following are two examples:

- An employee works for an agency that is a Head Start grantee and this individual's total compensation is \$200,000. This agency has a cost allocation plan and 30% of this individual's compensation (i.e. \$60,000) is currently billed to Head Start. The agency must limit the portion of this individual's compensation charged to Head Start to \$48,630, or 30% of \$162,100. The agency must, therefore, find other (non-Head Start) funding sources to make up the \$11,370 difference, should this agency wish to continue compensation to this employee at the rate of \$200,000 per year.
- Again, an employee works for an agency that is a Head Start grantee and this individual's total compensation is \$200,000. This agency has an approved indirect cost rate of 12% and this individual's total compensation is paid for from the indirect cost pool. This 12% indirect cost rate was calculated by dividing the grantee's total indirect costs by the grantee's total direct costs. In this example, the grantee has indirect costs of \$1,200,000 and direct costs of \$10,000,000 (and total costs of \$11,200,000). The grantee will need to reduce its indirect costs by \$37,900 – the difference between \$200,000 and \$162,100 - and either recompute the indirect cost rate it charges to its Head Start grant or find some other way of capping grantee indirect costs to assure compliance with Section 205.

Please note that the compensation cap limits not only the compensation which can be paid staff using Head Start funds, but also effectively establishes the same limits for non-federal matching funds. That is, grantees may not claim as non-federal share an amount representing the value of donated time if the value of the donated time is determined using a rate of compensation that is in excess of that of an Executive Level II employee.

This requirement applies to all cumulative salaries paid during fiscal year 2005 from funds appropriated under the fiscal year 2005 appropriation. Some grantees have already received their FY 2005 refunding award. All such grantees need to review their FY 2005 budget to be sure that no staff are being paid compensation in excess of the statutory cap. If you have any such staff, you will need to discuss this with your Regional Office and submit a revised budget. If you believe you are even close to having such staff you should discuss this with your Regional Office.

Head Start programs will be notified in the future of any changes in the compensation rate of Executive Level II staff.

ACF understands that most Head Start grantees pay staff reasonable wages and benefits and relatively few Head Start staff will be impacted by the statutory threshold of Executive Level II compensation. However, the Congress added this provision in response to specific situations in which grantee staff were making unreasonably high wages. All of us must work together to assure Head Start is using its tax-payer funded resources to provide high quality services to as many children and families as possible.

Please direct any questions on this matter to your ACF Regional Office.

/s/

Joan E. Ohl
Commissioner
Administration on Children, Youth and Families