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TO: County Auditors
County Commissioners
Independent Public Accountants

FROM: Keith Faber
Ohio Auditor of State

SUBJECT: Compensation Changes for Boards of Elections Members Pertaining
to the 2020 Federal Census Results

Bulletin Purpose

The purpose of this Bulletin is to clearly layout how the 2020 federal census results would affect boards of elections members' compensation going forward.

Implementation Date

Upon issuance

Background

It has come to the Auditor of State's attention that there are some questions regarding how the boards of elections members' compensation will be affected going forward due to the 2020 federal census results. We will provide guidance through a quick question and answer format.

Question: When would the 2020 federal census results become effective for the purposes of boards of elections members' compensation?

Answer: The effective date of federal census results has been determined to be the date the results are received by the Governor from the U.S. Secretary of Commerce. *See* OAG Op. Nos. 2003-014, 2001-001. For the 2020 federal census results, this occurred on August 12, 2021. OAG Op. No.

2021-21. Therefore, boards of elections members' annual compensation should be based on the 2020 federal census numbers immediately upon this effective date. *See* AOS Bulletin 2019-001; OAG Opinion Nos. 2021-21, 99-033, 82-047.

Question: After this effective date, if the 2020 federal census results in a change to a board of elections member's R.C. § 3501.12 population pay class, higher or lower, should a member's annual compensation amount be prorated for the remainder of the calendar year for 2021?

Answer: Yes. *See* OAG Opinion Nos. 2021-021, 2016-008. If the 2020 federal census results change the R.C. § 3501.12 population pay class for a board of elections member, the member's 2021 compensation should be prorated under their new pay class from August 12, 2021, for the remainder of calendar year 2021 (December 31, 2021). Boards of elections members' annual compensation amount going forward from January 1, 2022, until the next decennial federal census results are effective, should be according to the 2020 federal census results.

Question: Are the compensation changes for boards of elections members, as a result of the 2020 federal census, subject to the in-term compensation change restrictions found in Article II, Section 20 of the Ohio Constitution?

Answer: No. R.C. § 3501.12(D) states "For the purposes of this section, members of boards of elections shall be deemed to be appointed and not elected, and therefore not subject to Section 20 of Article II of the Ohio Constitution." This language was added to the statute by the General Assembly in 1984 in response to an Ohio Supreme Court decision, *State ex rel. Milburn v. Pethtel*, 153 Ohio St. 1, 90 N.E.2d 686 (1950), which held boards of election members were "officers whose compensation is subject to the provision of Section 20 of Article II of the state Constitution, which precludes a change of compensation of any officer during his existing term." While it is not clear that an act of the General Assembly is sufficient to overturn an interpretation of a provision of the Ohio Constitution by the Ohio Supreme Court, the Ohio Attorney General has advised that R.C. § 3501.12(D) should be given full effect, unless a court determines otherwise. *See* OAG Op. No. 97-027.

See Next Page for additional Q & A

Questions

If you have any questions regarding the information presented in the Bulletin, please contact your regional Auditor of State's Office. Regional AOS contact information is available at: [Contact Us \(ohioauditor.gov\)](https://www.ohioauditor.gov).



Keith Faber
Ohio Auditor of State

Updated March 31, 2022 to include the following FAQ

Q. How do county boards of election account for the annual cost of living adjustments in their application of the census population changes?

A. County boards of election should apply the cost of living adjustment (COLA) percentage to the rates in (B)(1) and (2) for each year after 2019 and then use the census population number to calculate the total amount of annual compensation based on the increased numbers in (B)(1) and (B)(2).

Using this rule, the rates in the statute keep the COLA increase from each year and the new population number dictates the amount the officials receive after August 12, 2021. To demonstrate application of this, the county board of elections must base its 2021 salary (post census release) on the numbers in the statute after the cost of living increase is applied to the numbers in (B)(1) and (B)(2) for each year after 2018 (2019, 2020, and 2021). See below:

- Calendar year 2019 – increase each dollar amount in (B)(1) and (B)(2) by 1.75%
 - o (B)(1)(a) = $102.41 + 1.75\% = 104.20$ for each full 1,000 of the first 100,000 population
 - o (B)(1)(b) = $48.79 + 1.75\% = 49.64$ for each full 1,000 of the second 100,000 population
 - o (B)(1)(c) = $26.50 + 1.75\% = 26.96$ for each full 1,000 of the third 100,000 population
 - o (B)(1)(d) = $8.13 + 1.75\% = 8.27$ for each full 1,000 above 300,000 population
 - o (B)(2) = $6,000 + 1.75\% = 6105$
- Calendar year 2020 – take the 2019 dollar amounts in (B)(1) and (B)(2) as they were increased and increase them again by 1.75%
 - o (B)(1)(a) = $104.20 + 1.75\% = 106.02$
 - o (B)(1)(b) = $49.64 + 1.75\% = 50.51$
 - o (B)(1)(c) = $26.96 + 1.75\% = 27.43$
 - o (B)(1)(d) = $8.27 + 1.75\% = 8.41$
 - o (B)(2) = $6105 + 1.75\% = 6211.84$
- Calendar year 2021 – take the 2020 dollar amounts in (B)(1) and (B)(2) as they were increased and increase them again by 1.75%
 - o (B)(1)(a) = $106.02 + 1.75\% = 107.88$
 - o (B)(1)(b) = $50.51 + 1.75\% = 51.39$
 - o (B)(1)(c) = $27.43 + 1.75\% = 27.91$
 - o (B)(1)(d) = $8.41 + 1.75\% = 8.56$
 - o (B)(2) = $6211.84 + 1.75\% = 6320.55$
- To compute the new rates after August 12, 2021, take the 2021 (B)(1) and (B)(2) numbers and then calculate the compensation based on the population from the new census.
 - o The final compensation amount is whichever number is greater between the sum of the most updated (B)(1) numbers or the most updated (B)(2) number.