

## **New Rule Requires Federal Contractors to Report Executive Compensation & Subcontractor Information**

Several federal agencies have promulgated a new rule which requires covered federal contractors to disclose information about the total compensation paid to their five most highly compensated executives and to the highest paid executives of their first-tier subcontractors. This rule amends the Federal Acquisition Regulation (FAR) to implement the section of the Federal Funding Accountability and Transparency Act (FFATA) that requires the Office of Management and Budget (OMB) to create a free, public website that provides information about all federal contract awards. The website can be found at [USASpending.gov](http://USASpending.gov).

**The Rule extends the compensation and subcontractor reporting requirements applied to American Reinvestment and Recovery Act (ARRA) funded contracts to all federal contracts entered into after July 8, 2010 which are over \$25,000, except the following: (1) classified solicitations and contracts; (2) contracts with individuals; and (3) contractors and subcontractors whose gross income is less than \$300,000.**

The Rule applies if in the preceding year the contractor or subcontractor received eighty percent (80%) or more of its annual gross revenue in federal contracts and subcontracts, loans, grants and subgrants, and cooperative agreements and the contractor or subcontractor received \$25 million or more in annual gross revenue from federal contracts or subcontracts, loans, grants and subgrants, and cooperative agreements.

For purposes of this new rule, "total compensation" means the cash and noncash dollar value earned by an executive during the contractor's and its first-tier subcontractors' preceding fiscal year. It includes salary, bonus, awards of stock, stock options, stock appreciation rights, earnings for services under non-equity incentive plans, change in pension value, above-market earnings on deferred compensation that is not tax-qualified, and other compensation, if the aggregate value of all such other compensation exceeds \$10,000.

The Rule will be implemented in a phased approach in order to minimize the burden on federal agencies and contractors. It will be phased in as follows:

- Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was at least \$20 million.
- From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was at least \$550,000.
- Beginning March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was at least \$25,000.

Depending on how an employer tracks and maintains compensation information, these new reporting requirements will impose additional significant administrative burdens.

### **So, what should employers do?**

- Inventory your current federal contracts to determine whether you have any existing contracts valued at \$25,000 or more and whether you meet the other

criteria outlined above. If so, you will need to calendar the above phase-in dates to ensure compliance with this new rule.

- Employers who based on this internal federal contract inventory find that they are covered by this new rule then will need to develop processes for collecting, organizing, and promptly reporting the information described above from their own executive compensation records as well as those of their subcontractors.
- Finally, the new rule requires all covered federal contractors to notify their subcontractors that the information described above will be made public.

If you have any questions regarding this alert, please contact [Kyle Young](#) or your [Miller & Martin Labor and Employment law attorney](#).

*The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.*

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