

Articles

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Federal Grant & Contract News for Nonprofits - April 2014

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In April, the Obama Administration took a decisive step toward closing the gap in pay equality for women and minorities employed by Federal contractors, including nonprofits. Additionally, the U.S. House of Representatives passed new legislation aimed at increasing transparency for both Federal procurement and grant funds.

Pay Equality

On April 8, 2014, President Barack Obama signed an **Executive Order** and a **Presidential Memorandum** advancing pay equality for women and minorities employed by Federal contractors. The Order prohibits Federal contractors that generally have contracts exceeding \$10,000 from retaliating against employees who discuss their compensation. The Memorandum directs the U.S. Department of Labor (DOL) to propose a rule requiring Federal contractors and subcontractors to submit summary compensation data to DOL, including data categorized by sex and race. The data will be used to develop tools to enhance both voluntary compliance with and enforcement of Federal Equal Pay and Civil Rights laws. DOL must issue the rule within 120 days. Contractors will not understand the full impact of either the Order or Memorandum until DOL implements its regulations. The Memorandum requests DOL "[t]o the extent feasible...avoid new record-keeping requirements and rely on existing reporting frameworks." Although the Executive Order and Presidential Memorandum appear to apply to contractors and not grantees, nonprofits that have both contracts and grants with the Federal government will be covered.

While the Memorandum specifically states that DOL should work to "minimize, to the extent feasible, the burden on Federal contractors and subcontractors and in particular small entities, including small businesses and small nonprofit organizations," nonprofits should still take measures to ensure they have fair and defensible compensation policies and procedures. Nonprofits should consider taking the following interim steps:

- Review compensation practices to ensure that these practices are based on business logic and free of discrimination based on protected characteristics, such as race and sex.
- Articulate clear standards for establishing compensation for individuals.
- Review internal pay data to determine if pay discrepancies exist by protected characteristics, such as gender or race. If there is a legitimate rationale for pay discrepancies that may give rise to the appearance of discrimination, document it. If there is no legitimate rationale, explore ways to eliminate unsupported discrepancies.
- Consider how jobs are grouped or graded, to ensure thoughtful and logical segmentation.
- Revise written policies that forbid employee discussions regarding compensation. Consider drafting policy language that explicitly prohibits retaliation against employees for discussing wages or raising wage-related concerns.
- Train management personnel not to prohibit employee wage discussions or retaliate against employees for the same.
- For future teaming agreements or subcontracts, consider requiring subcontractors to submit a certification of compliance with the anti-retaliation Executive Order.

The Digital Accountability and Transparency Act

On Monday, April 28, 2014, the U.S. House of Representatives passed, by voice vote, the Digital Accountability and Transparency Act of 2014 (S. 994 or the "DATA Act"), which aims to "establish Government-wide financial data standards for any Federal funds made available to or expended by Federal agencies and entities receiving Federal funds[,] as well as to simplify Federal award reporting by recipients of Federal awards (including grant recipients). To simplify Federal award reporting, the

DATA Act calls for the establishment of a two-year pilot program, which will facilitate the development of recommendations for (1) standardized government-wide reporting elements, (2) the elimination of unnecessary duplication in financial reporting, and (3) the reduction of compliance costs for Federal contract and grant recipients. The DATA Act also:

- Expands the Federal Funding Accountability and Transparency Act of 2006 "by disclosing direct Federal agency expenditures and linking Federal contract, loan, and grant spending information to programs of Federal agencies to enable taxpayers and policy makers to track Federal spending more effectively[;]" and
- Holds Federal agencies more accountable for the completeness and accuracy of the data submitted by requiring Federal agency Inspectors General to review a sampling of the spending data submitted by Federal agencies pursuant to the Act, and to report to Congress on the "completeness, timeliness, quality, and accuracy of the data sampled and the implementation and use of the data standards...."

The U.S. Senate already has passed similar legislation and, while it is not yet certain if the President will sign such a bill, given the general favor toward "transparency" and the fact there is bi-partisan support during an election year, we would expect such legislation to ultimately become law in some form.

While neither of the above legislative initiatives will have an immediate impact on nonprofits, both are notable as they highlight the items of concern and the agenda of the Obama Administration and Congress in the coming months and perhaps items to look for in any finalized budget and/or appropriations legislation. We will continue to monitor these issues and keep you updated in future newsletters.

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For more information, please contact [Dismas Locaria](#), [Melanie Jones Totman](#), [Megan Mann](#), [Elizabeth Buehler](#) or [Jeffrey Tenenbaum](#).

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