

## Articles

January 2013

### Federal Grant & Contract News for Nonprofits - January 2013

Related Topic Area(s): Meeting, Vendor and Government Contracts, Miscellaneous

In January, there were some particularly important developments with respect to whistleblower protections in connection with federal grants and contracts, as well as Office of Management and Budget (“OMB”) information on the second fiscal cliff deadline and how executive agencies should begin preparing for the worst. Because of the importance of Foreign Corrupt Practices Act (“FCPA”) compliance, we also include information about FCPA compliance guidance issued late last year by the U.S. Department of Justice and Securities and Exchange Commission.

**New Whistleblower Protections** – Section 828 of the Fiscal Year 2013 National Defense Authorizations Act (“FY13 NDAA”) significantly expands employees’ protections from reprisal for disclosure of certain information relating to federal grants and contracts of all types (not just defense-related). Under this provision, an employee may not be discharged, demoted, or otherwise discriminated against for “disclosing information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to the public health or safety, or a violation of law, rule or regulation related to a federal contract (including competition for or negotiation of a contract) or grant.” Notably, these protections apply to grants as well as contracts, and the law is extremely broad and vague in what is considered information worthy of disclosure (e.g., what constitutes “gross mismanagement” or “gross waste”). The full text of the FY13 NDAA can be found by [clicking here](#).

**Fiscal Cliff Continued** – On January 14, 2013, the Deputy Director for Management at OMB issued a memorandum to all executive agency heads to take certain steps to plan for and manage the budgetary uncertainty that may ensue if the President and Congress do not prompt action to avoid sequestration. In particular, unless Congress acts to amend current law, the President is required to issue a sequestration order on March 1, 2013, canceling approximately \$85 billion in budgetary resources across the Federal Government. Further uncertainty is created by the expiration of the Continuing Appropriations Resolution, 2013 on March 27, 2013. Without a doubt, sequestration will affect federal grant and contract programs across the board. Some programs may feel significant belt tightening while others may be eliminated altogether. This memorandum can be found by [clicking here](#).

**FCPA Guidance** – In November 2012, the U.S. Department of Justice and Securities and Exchange Commission released “A Resource Guide to the U.S. Foreign Corrupt Practices Act,” a detailed compilation of information about the FCPA, its provisions, and enforcement. This Guide provides information about a wide variety of topics, including who and what is covered by the FCPA’s anti-bribery and accounting provisions; the definition of a “foreign official;” what constitute proper and improper gifts; travel and entertainment expenses; the nature of facilitating payments; how successor liability applies in the merger and acquisition context; the hallmarks of an effective corporate compliance program; and the different types of civil and criminal resolutions available in the FCPA context. The Guide also provides unique insight into FCPA enforcement practices. The Guide can be found by [clicking here](#).

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

*This article is not intended to provide legal advice or opinion and should not be relied on as such. Legal advice can only be provided in response to a specific fact situation.*

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