



Fair Chance
EVERY CHILD SUCCEEDS

Coalition for Nonprofit Equity's Update for Nonprofits on DC's Contract and Grantmaking Equity Efforts

March 9, 2023

Welcome! Please introduce yourself in the chat box! (name, pronouns, position, organization)

Technical Notes



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Fair Chance

- **Can you hear and see me?** If so, please raise your hand.
- **Tech Issues?** Please send a note in the chat box to **FC TECH** and I will help you troubleshoot.
- **Q&A:** You can ask questions at any time using the chat box. We will also have select Q&A sections where you can be unmuted and ask questions directly. We also have a Jamboard that will be open throughout the meeting for your comments.
- **This meeting is being recorded.** The recording will be shared with attendees and on the Fair Chance website after this session.

Coalition for Nonprofit Equity Steering Committee

Name	Organization
Lori Kaplan	Former CEO of the Latin American Youth Center (LAYC)
Gretchen Van der Veer	Fair Chance
Kim Perry	DC Action
Charlene Flaherty	Community of Hope
Deborah Shore	Sasha Bruce
Nechama Masliansky	So Others Might Eat (SOME)
Ryan Trout	The Coalition for Nonprofit Housing & Economic Development (CNHED)
Adam Maier	Pathways to Housing DC
Melissa Millar	Consultant for Coalition for Nonprofit Equity

Purpose of the Meeting

- Update on Government's and Steering Committee's activities
- Gather additional stories
 - <https://jamboard.google.com/d/1OUt52EPILIRiPJCWVKvbuE7n2grDiF4dlarWxXPqmvk/edit?usp=sharing>
- Recruit and prepare people for testimony
- Review talking points
- Bring equity to nonprofits – opportunity to re-set the relationship between DC government and its nonprofit partners

Agenda

Time	Topic
<i>9am - 9:05am</i>	<i>Welcome & Introduction</i>
<i>9:05am – 9:20am</i>	<i>Updates from the Government on ongoing implementation activities, and updates from Steering Committee on ongoing implementation</i>
<i>9:20am – 9:35am</i>	<i>Opportunity to share experiences about law</i>
<i>9:35am – 9:50am</i>	<i>Talking Points</i>
<i>9:50am – 10am</i>	<i>Next steps</i>

Overall Compliance Findings

- **Big Nonprofits are at an advantage (mostly white-led):** In nearly all instances where the government agency eventually provided the correct rate, nonprofits had to negotiate hard with agency staff. Smaller nonprofits lack capacity for the level of negotiation required and/or fear reprisal if they try to negotiate with an agency.
- **Government personnel (grant and contract administrators) still don't seem to know about the Act:** Nonprofits report having to share a copy of the law with DC personnel and being told it must be discussed with their supervisor before moving forward with negotiation (this sometimes takes months to receive legal opinion postponing the start of the grant and hiring of recruited personnel).
- **There is deep confusion on what happens to federal overhead allowances across all agencies.** One organization might receive 2 different rates, and DC government might still be keeping federal indirect costs from nonprofits.
- **A few DC government agencies are doing better at implementation than others.** In reviewing FY23 solicitations, DBH's grant and contract materials correctly included reference to the Act and each of the five ways a nonprofit can develop and use a rate to negotiate/renegotiate its rate with a DC government agency.
- **Nonprofits report being told to reduce services if they want their rate.** Agencies such as DC Health are not only seeking to limit indirect costs to 10%, but nonprofits report DC Health administrators stating that if nonprofits want their rate that must come at a reduction of services/programs. This is what the law is meant to prevent.



DC Contract Compliance with the Nonprofit Fair Compensation Act of 2020

- We reviewed 7 agency contract solicitations for FY23:
 - Of 3 CFSA examples, each failed to mention Act and **specifically** noted that contractor should **not** include indirect costs.
 - Of 3 examples (DHCD, DHCF, and DISB), each failed to mention Act and linked to 2010 document on “standard contract provisions in DC” which would not include information on Act, effective only since March 2021.
 - Of 1 example with DBH, correctly mentioned the Act and each of the five ways to develop/use a rate.

EXAMPLES of Contract Compliance / Non-Compliance

CFSA Congregate Care Therapeutic Group Home Services, DOC613969; DCRL-2022-H-0110

B.5.3.2. The contractor shall not mark-up the cost reimbursement allowable expenses on this contract with indirect cost, overhead, general, and administrative cost. Profit may not be charged against cost reimbursement expenses under this contract. Tangible items charged under the cost reimbursement CLIN 0003 (such as vehicles, computers, or equipment) will become the property of the District of Columbia.

DBH Nurse Temporary Staffing, IFB - DBH - FY2023 Nurses & Nursing Support Staffing (REV006)

B.7 NONPROFIT FAIR COMPENSATION ACT OF 2020, D.C. Code § 2-222.01 et seq. Nonprofit organizations, as defined in the Act, shall include in their rates the indirect costs incurred in provision of goods or performance of services under this contract pursuant to the nonprofit organization's unexpired Negotiated Indirect Cost Rate Agreement (NICRA). If a nonprofit organization does not have an unexpired NICRA, the nonprofit organization may elect to instead include in its rates its indirect costs: (1) As calculated using a de minimis rate of 10% of all direct costs under this contract; (2) By negotiating a new percentage indirect cost rate with the awarding agency; (3) As calculated with the same percentage indirect cost rate as the nonprofit organization negotiated with any District agency within the past 2 years; however, a nonprofit organization may request to renegotiate indirect costs rates in accordance with B.6; or (4) As calculated with the same percentage indirect cost rate as the nonprofit organization negotiated with any District agency within the past 2 years; however, a nonprofit organization may request to renegotiate indirect costs rates in accordance with B.7; or

B.7.1 If this contract is funded by a federal agency, indirect costs shall be consistent with the requirements for pass-through entities in 2 C.F.R. § 200.331, or any successor regulations

DC Grant Compliance with the Nonprofit Fair Compensation Act of 2020

- We reviewed 9 agency grant solicitations in FY23:
 - Of 3 DC Health grant examples, none mentioned Act and each tried to cap indirect costs at 10%.
 - Of 2 with DME and the Office of the Secretary, both failed to mention Act or indirect costs.
 - Of 2 with OSSE, both mentioned a NICRA or 10% indirect cost rate cap, but not the other 3 ways to develop/use a rate.
 - Of 1 with DBH and 1 with the Office of Victims Services and Justice Grants, both correctly mentioned the Act and each of the five ways to develop/use a rate.

EXAMPLES of Grant Compliance / Non-Compliance

DC Health, Healthy Steps, FO# CHA-PG-00002-006 RFA# CHA_HSP_12.2.22

11.4 INDIRECT COST Indirect costs are costs that are not readily identifiable with a particular project or activity but are required for operating the organization and conducting the grant-related activities it performs. Indirect costs encompass expenditures for operation and maintenance of building and equipment, depreciation, administrative salaries, general telephone services and general travel and supplies. Grant awardees will be allowed to budget for indirect costs of no more than ten percent (10%) of total direct costs.

OSSE Out of School Time Grant and Youth Outcomes

A.3.5. Program Expenses Grant funds may be used for functional program expenses across multiple programs and across multiple locations and must be described in the narrative. Grant funds awarded must be applied to direct program costs such as program staff salary and benefits, program supplies and materials, curricula, program evaluation, educational/learning field trip expenses, staff time, expenses related to procuring background checks, staff time related to data entry, reporting, and accounting costs when related to program expenses, cleaning supplies, Personal Protection Equipment (PPE), program equipment and supplies necessary to create and sustain programming. The Nonprofit Fair Compensation Act of 2020, D.C. Law 23-185, Subchapter XI-A, allows any grantee to apply a federal Negotiated Indirect Cost Rate Agreement (NICRA) to the grant funds and approved budget. If a grantee does not have a NICRA, the de minimis indirect rate is 10%.

DBH Recovery Residences

An Applicant may include its indirect costs in its budget calculation. (See the Nonprofit Fair Compensation Act of 2020, DC Act 23-565 [effective March 2021]) This may be done through use of a cost rate. In budget backup materials the Applicant should identify the basis for the calculation, addressing one of the following bases that District law permits it to choose:

- 1) Its current, unexpired, federal Negotiated Indirect Cost Rate Agreement (NICRA) rate, a negotiated rate with the federal government; OR
- 2) One of the following methods:
 - a. 10% of the grant's direct costs;
 - b. A new negotiated rate with DBH;
 - c. The same indirect rate that it has used with any District agency in the past 2 years; or
 - d. An independent Certified Public Account's (CPA) calculated rate using federal Office of Management and Budget (OMB) guidelines

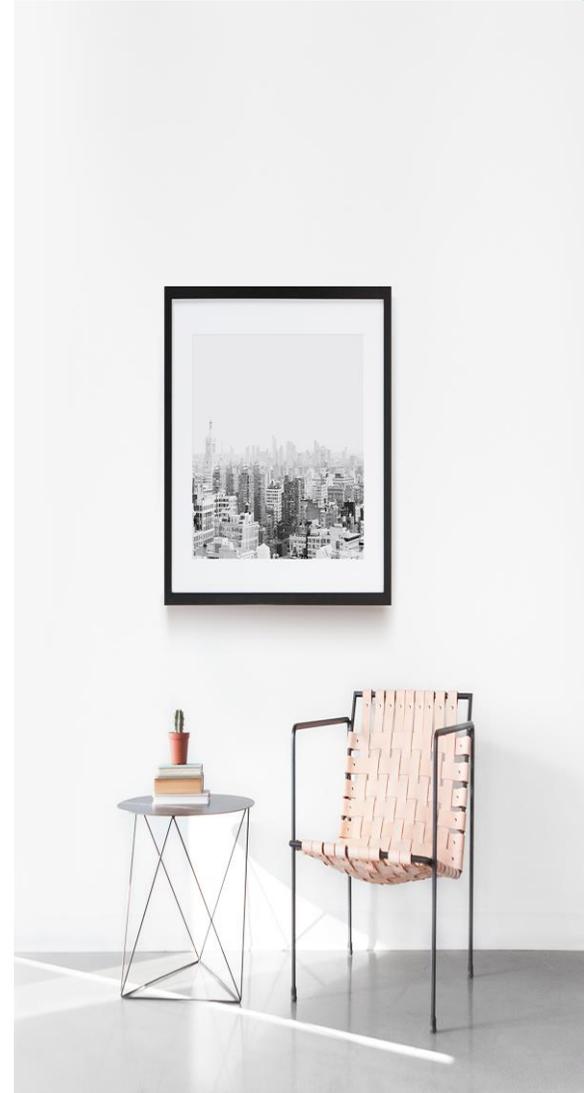
Nonprofit Compliance Monitoring

- Testify at FY24 budget hearings, beginning March 27, 2023 with OCP!
- Monitor government compliance with standard solicitation language, holding Listening Sessions, conducting cost surveys of agencies
- Align with the Coalition and its *Pro Bono* attorney to bring an action against the DC government for noncompliance, if necessary
- Ask for true indirect costs at agency negotiations – **DON'T BACK DOWN!** If asked to reduce programs/services to achieve meeting your true costs – that's **YOUR** choice.

Nonprofits have subsidized government long enough

Big picture takeaways...

- Agency/Office personnel and EOM Offices may still need clear direction and training on the law.
- Standardized language about the law needs to be included in ALL grant and contract solicitations applicable in FY23 and FY24.
- EOM to conduct its survey and develop its database to assess the overall costs of implementation.
- Nonprofits should get their indirect rate **WITHOUT** reducing services and program offerings; some agencies have flexibility and can reprogram funding internally.
- An Ombudsperson for nonprofits to assist with the law would be beneficial for ALL nonprofits, but *particularly* for smaller nonprofits.



Nonprofit Negotiations



1. Remember – You are part of the Coalition!
2. Negotiation tips
 1. Bring/share a copy of the Signed Act:
https://lims.dccouncil.gov/downloads/LIMS/41777/Signed_Act/B23-0107-Signed_Act.pdf
 2. Have your org's Indirect Cost Rate/NICRA
 3. Bring a list of all other grant/contracts with DC government and what rate they pay
 4. If get ANY pushback, ask agency/office to consult with their General Counsel about the law
 5. Prepare a budget with your TRUE indirect cost rate

Stories from Nonprofits



1. Raise your Hand and share your experiences with DC Agencies.
2. Share your experience in the chat
3. Add a Sticky Note with your experience to the JamBoard:
<https://jamboard.google.com/d/1OUt52EPILIRiPJCWWKvbuE7n2grDiF4dlarWxXPqmvk/edit?usp=sharing>

Question: If it's true that folks can use their full indirect rate but there's no new money - what services are people cutting? What's the impact?

Speaking at a Public Hearing or Roundtable

1. See link below to sign up to testify for FY24 budget hearings
2. Prepare Testimony. Need support? Contact nonprofitequity@fairchancedc.org
3. When it is your turn to testify, your name will be called by the committee chair.
4. Witnesses generally receive 3-5 minutes to present testimony.



<https://dccouncil.gov/2022-2023-performance-oversight-fy-2024-budget-schedules/>

Upcoming Budget Hearing Dates*

Date	Agency	Time	Committee
3/27/2023	Office of Contracting and Procurement	9am-12pm	Public Works & Operations
3/29/2023	Serve DC	3pm-6pm	Recreation, Libraries, Youth Affairs
3/31/2023	Department of Human Services	9am-6pm	Housing
4/3/2023	Department of Housing and Community Development & Housing Production Trust Fund	9am-6pm	Housing
4/3/2023	Deputy Mayor for Health and Human Services & Department of Health Care Finance	3pm-6pm	Hospital and Health Equity
4/5/2023	DC Public Schools, Office of the State Superintendent of Education, Deputy Mayor for Education	9am-6pm	Whole
4/5/2023	Deputy Mayor for Health and Human Services & Department of Health Care Finance	12pm-6pm	Health
4/6/2023	Department of Behavioral Health	12pm-6pm	Health
4/6/2023	DC Housing Authority	9am-6pm	Housing
4/11/2023	Child and Family Services Agency	12pm-6pm	Facilities and Family Services
4/11/2023	Department of Youth Rehabilitation Services	3pm-6pm	Recreation, Libraries, Youth Affairs
4/12/2023	DC Health	12pm-6pm	Health
4/13/2023	Office of Victims Services and Justice Grants	9am-6pm	Judiciary and Public Safety
4/14/2023	FY24 Local Budget/Budget Support/Federal Portion	9:30am-3pm	COW

* Several hearings are still “TBD” as of Feb 27 2023; a full list will be updated as available

Full List of Hearing: <https://dccouncil.gov/2022-2023-performance-oversight-fy-2024-budget-schedules/>

High Level Talking Points

What Nonprofits Need:

- “A culture shift across government to a more equitable relationship of mutual respect between government and their nonprofit partners.”
- Councilmembers to require agencies/offices to comply with requests for data from the Executive on their upcoming cost/budget survey
- For agencies/offices with the budget flexibility, they should use it to meet nonprofits’ true indirect costs (until all agencies are properly funded)
- All General Counsels should be informed on the law to ensure agencies and offices prevent further noncompliance
- Additional training throughout government’s contracting and grantmaking staff



The Opportunity to Act

- ALL Councilmembers should ask ALL agencies and offices they oversee **HOW THEY WILL BUDGET FOR IT** and how are they training and implementing the law in their own contract and grant processes

High Level Talking Points (con'd)

Key Recommendations

- Ensure ALL grant officers in District agencies and Executive Branch offices that manage grant funds and 3rd party pass-through entities are trained on the law
- Ensure ALL contract administrators in District agencies and offices that contract with nonprofits are trained/attend OCP Procurement Institute
- EOM to conduct a cost analysis of how federal funding and indirect cost rates translate in the District and base FY25 budgeting on results
- Councilmembers, Committee Staff should consider adjusting agency budgets (DC budget lines “CSG 40 or 41”) to allow for the adequate funding to nonprofit partners in FY24
- Agencies should consider annual adjustments to their nonprofit partners grants and contracts to account for inflation and COLA



For Detailed Talking Points and Letter Submitted to Council and EOM Visit:
<https://fairchance.org/the-coalition-for-nonprofit-equity/>

What's Next?

1. Sign onto Op-Ed for the Washington Post
2. Testify – give us your name, put the hearing on your calendar
 - a. Prepare your testimony. We're happy to help! Email nonprofitequity@fairchancedc.org and ask for help if you need it.
3. Let us know if you'd like to be a part of potential litigation on the law
4. Continue to document your experiences and tell us your stories

Equitable treatment is your legal right, and we need to speak with one voice.

Larger organizations need to be particularly visible to cover for the smaller organizations. Solidarity is the thing.

United we Stand!

March 9, 2023

