

**Talking Points for FY24 Budget Oversight Hearings**  
**Coalition for Nonprofit Equity on the Nonprofit Fair Compensation Act of 2020**  
**March 2023**

**Goal of this document:**

To frame the current status in the Act's implementation – what's working and what's not – and provide advocates and partners with common messaging for FY24 budget oversight and meetings with the Executive Office of the Mayor (EOM), Councilmembers and their staff, and Agency Directors in 2023.

Please do not feel obligated to use everything in this document, take what feels useful to you and your organization, and please *do* add in personal stories and examples to customize for the listener.

**1. Background on the Nonprofit Fair Compensation Act of 2020 and Title I, Subtitle I, or the “Nonprofit Fairness Analysis”, of the Fiscal Year 2021 Budget Support Act of 2020**

A. The Nonprofit Fair Compensation Act of 2020 requires phased implementation over five fiscal years to budget in indirect costs for implementing nonprofits providing services for the District through grants and contracts. **In FY23**, all grants and contracts **up to \$5 million** will include a nonprofit's indirect costs (excluding hospitals, universities, and foundations). The Act increases covering grants and contracts through FY2026 until all grants and contracts above \$25 million are effectively addressed (with the same previous exclusions). The Act provides **five ways** for non-excluded nonprofits to determine their indirect cost rates for use in negotiations with District officials:

- 1) Use a federally negotiated indirect cost rate (NICRA) established with a relevant federal agency.
- 2) Take a standard 10% *de minimis* rate of all direct costs.
- 3) Negotiate a new percentage indirect cost rate with the District grant or contract-awarding agency.
- 4) Use a previously negotiated rate (within the last two years) with a District government agency.
- 5) Use an independent Certified Public Account's (CPA) calculated rate using federal Office of Management and Budget (OMB) guidelines.

B. The “Nonprofit Fairness Analysis” funded a \$200,000 cost study to determine the amount of federal pass-through funding for nonprofits the District had inappropriately retained from the implementing nonprofits, as pursuant to 2014 Office on Management and Budget (OMB) guidance indirect costs should pass-through. The study was never completed.

## 2. Status of Implementation

### A. Solicitations and Inclusion/Non-Inclusion of Standard Language on Act

We examined a sample of solicitations released by District Agencies in FY23 (i.e. from October-December 2022) that met the criteria for year two implementation of the law. It is clear from the variety of language used in the solicitations that if standard contract and/or grant solicitation language has been generated, it has not been taken up across offices and agencies and is not being faithfully executed by all grantmaking and contract and procurement personnel.

### Grants

Of the nine grant examples collected, three are DC Health grants, and each grant not only **fails** to mention the Act, but **also** caps indirect costs at 10%.

- [Healthy Steps RFA FINAL2 0.pdf \(dc.gov\)](#)
- [SyndemicRFA FINAL.pdf \(dc.gov\)](#)
- [Local HV and Place Based RFA FY23 FINAL.pdf \(dc.gov\)](#)

DC Health Example (Page 28, Sec. 11.4):

**“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.”**

A grant to promote DC voting rights for the Office of the Secretary and an employer partnership grant between DME and WIC **both fail** to mention to Act or anything about indirect costs *at all*.

- [FY23 RFA - Grant to Promote District of Columbia Voting Rights Statehood.pdf \(dc.gov\)](#)
- [2023 Employer Partnership Grant RFA FINAL Update 12.2.22 0.pdf \(dc.gov\)](#)

The Coalition notes two grants from OSSE that mentions the Act and two of the ways to address an indirect cost rate – a NICRA (if the organization has one) or taking a *de minimis* rate; however, the solicitation doesn’t fully address all the ways the Act allows development of a rate.

- [2023 Summer Strong DC RFA.Final .pdf](#)
- [Summer Strong SNP 2023 RFA.Final .pdf \(dc.gov\)](#)

OSSE Example (Page 6, Sec. A.3.3. & Page 7, Sec. A.3.5.):

**“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%.”

The review notes that a grant from the Office of Victims Services and Justice Grants and a grant from the Department of Behavioral Health (DBH) mention the Act and the various ways to calculate the rate, although we do also note the non-standard ways these two solicitations go about communicating this information.

- [Final RFA FY2023 JG Supplemental ARPA and PSN.pdf \(dc.gov\)](#)
- [RFA DCRR082622 Recovery Residences.pdf](#)

DBH Example (Page 19):

**“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.”

## Contracts

We reviewed seven examples of recent contract solicitations for FY23. We note that three distinct solicitations from CFSA each **failed** to include language about the Nonprofit Fair Compensation Act of 2020, with two of those specifically including language noting, “The contractor shall not mark-up the cost reimbursement allowable expenses on this contract with indirect cost, overhead, general, and administrative cost.”

- Foster Home and Adoption Services. DoC633559, DCRL-2023-H-0002.
  - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc633559&hash=371qsabht72xg68n>
- Congregate Care – Therapeutic Group Home Services. DoC61396, DCRL-2022-H-0110.
  - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc613969&hash=371qsabht72xg68n>
- Emergency Short-Term Child Care Services. Doc636714, DCRL-2023-H-0016.
  - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc636714&hash=371qsabht72xg68n>

Three additional solicitations failed to mention the Nonprofit Fair Compensation Act, and two of those linked to a July 2010 “Standard Contract Provisions of the District of Columbia” document in the Ariba system as part of their solicitation documents. The July 2010 document could in no way include *any* information about the Act, as it was only effective from March 2021; this document should be updated to include all recent and relevant contracting-related DC Code updates.

- Independent Verification and Validation of MMIS (DHCF). DoC609502.
  - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc609502&hash=371qsabht72xg68n>
- FY23 – DHCD – Due diligence, litigation support, and settlement services. DoC638703.
  - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc638703&hash=371qsabht72xg68n>
- FY23-SR0- DC Earned Income Tax Credit Program Administration. DoC638877.
  - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc638877&hash=371qsabht72xg68n>

Finally, as with the grant review above, we found a contract solicitation for DBH for nurse staffing that included reference to the Act and the ways to calculate and use the rate.

- FY2023 – DBH Nurse Temporary Staffing & Nursing Services (V2). DoC638527. IFB - DBH - FY2023 Nurses & Nursing Support Staffing (REV006).
  - <https://contracts.ocp.dc.gov/solicitations/details?id=Doc638527&hash=371qsabht72xg68n>

## **B. Outstanding Concerns with DC Government**

**Listening Sessions:** DC Government officials initially suggested hosting listening sessions in September 2022 with the assistance and/or participation of the Coalition to hear from area nonprofits about their experiences with indirect costs on DC grants and contracts. Those sessions were not held, but the Coalition has been asked to participate with the government on listening sessions to be held in either March or April 2023.

**Standard Language:** The Coalition noted several violative examples in grant and contract solicitations issued for/in FY23. While the Director of the Office of Contracting and Procurement (OCP) sent a document dated June 29, 2022, to District Agency Directors and General Counsels on the Nonprofit Fair Compensation Act of 2020, it does not provide specific guidance about specific, standard clause language for grants and contracts to be used by all contract-awarding offices and agencies. The Coalition has shared a spreadsheet with both compliant and non-complaint solicitation examples (several noted in this document) with the Executive.

**Cost Study:** The Mayor's Budget Director met with the Coalition in February 2023 and acknowledged a mistake by the government at the outset of the law for failing to properly assess its overall cost, which contributed to a significant delay in the law's implementation. The Executive informed the Coalition it will be building out a database of contract costs, awardees, and indirect cost rates, to help track and compare rates, and clarify funding gaps and needs; a survey assessing additional complicating factors is in development. This database will likely take into the summer to build, and thus will not directly contribute to assessing budget formulations for FY24.

**Training and Awareness:** Ensuring all relevant grant, contract and procurement personnel are trained on the law, including General Counsels, and all training materials, including grants training videos, are completed and available for viewing and/or monthly trainings.

**Using Agency/Office Budget Flexibility:** The Executive noted to the Coalition that some agencies and offices may have more budget flexibility than others, and if so, they could reprogram/reallocate funding to meet nonprofits' true indirect costs (until all agencies are properly funded). During FY24 budget hearings, consider asking ALL Councilmembers to ask the 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. Councilmembers and Committee Staff can also consider adjusting agency budgets (DC non-personnel budget lines "CSG 40 or 41") to allow for the adequate funding to nonprofit partners in FY24.

### 3. The Role of Nonprofits in the District and the Challenge We're Facing (EQUITY):

- DC nonprofits provide vital services on behalf of the District to tens of thousands of residents each year. While our focus, scope of services and longevity in the District may vary, **we share one common feature: the District grants and contracts that we receive do not cover the full cost of doing business in DC, particularly when inflation has been so high.**
- For years, nonprofits have cobbled together the resources needed to provide quality services, often at the expense of staff, organizational stability and sustainability. We want to recruit and retain quality staff. We want to be able to do external evaluations of our programming to ensure efficacy. **We want to have a deep and lasting impact on the issues we seek to resolve. But this requires adequate resources.**
- **District grants and contracts for nonprofits rarely – if ever – account for inflation.** For many, this means we've been operating at the same baseline contract amounts for decades. However, District contracts for for-profit entities regularly include enhancements and “cost-plus” pricing to ensure the entities’ operating expenses are covered *on top of* receiving a profit. Nonprofits do not receive similar funding.
- **We are now almost 3 years into a pandemic:**
  - The pandemic has **increased the general cost of doing business** in the District (cleaning, PPE, overtime). Inflation in 2022 topped 8%, and is significantly higher in some sectors and for some products and services.
  - It has left our **clients traumatized and in greater need of services and support** than ever before. Cash stimulus, rental assistance, and other financial subsidies have largely ended.
  - It has **contributed greatly to staff burnout**, leading to the Great Resignation; staff turnover in direct service nonprofits is expensive while nonprofits are also competing to recruit staff in large part against government funders who can, by and large, pay more for similar workers with similar education, licensure, and experience.
- The current funding model and the failure to pay DC nonprofits the actual cost of their services is reaching a tipping point into a crisis scenario. What's at risk?
  - **Economic Stability:**
    - The nonprofit sector currently represents **26%** of the District's workforce; we generate **\$48 billion** in annual revenues and hold assets of **\$86.7 billion**; and leverage **\$1,347,000,000** in private funding. **A retraction of**

**the nonprofit sector would be a massive workforce and revenue loss to the district.**

- **Access to quality services:**
  - Part of what makes DC so rich is the abundance of civil society partners. Nonprofit organizations deliver vital services, give hope to the folks we serve, contribute to the vibrancy of our community and advance smart solutions to the challenges facing our society. **Without a robust nonprofit sector, District government will absolutely fail to deliver on the promises it makes each year to its constituents.** Nonprofit partnerships are vital to the day-to-day operations of the District, and the quality-of-life of our residents.
- **Philanthropy’s Position on Funding:**
  - Historically, foundations and philanthropy have not chosen to fund nonprofits’ indirect costs, seeking instead to only fund projects and programs that are innovative or apply best practices. A Bridgespan Group report from 2016 noted the need for philanthropic funders to not only fund the projects and programs they support, but the ancillary overhead or indirect costs of the funded organization. The same is true for government.
    - “Conventional wisdom on nonprofit indirect costs is beginning to reach alignment with what for-profit businesses have known all along: **continually spending less on indirect costs erodes efficiency and effectiveness, preventing organizations from producing better and lasting outcomes. Contracts and grants that fail to cover indirect costs actually reduce a charitable nonprofit’s effectiveness and efficiency.**” – National Council of Nonprofits, Investing for Impact: Indirect Costs are Essential for Success, September 2013

#### **4. The Opportunity to Act (everyone needs to say this in their testimony):**

“We appreciate that the Nonprofit Fair Compensation Act of 2020 seeks to ensure consistent application of overhead or indirect cost rates across all grants and contracts made by DC government agencies to nonprofits. This law is an important step in right-sizing and adequately compensating nonprofit partners for their “actual costs” of doing business in DC.

However, the implementation of this legislation remains problematic. We continue to see a lack of standard language across grant and contract solicitations, including without references to the Act, or seeking to limit the percentage of indirect costs a nonprofit can request. We also know that the government did not properly budget for indirect costs in FY22 or FY23, and had not conducted a cost study prior to developing the FY24 budget.

*In our experience(s), ...*

What agencies have done well? Which have not followed the law? How have you negotiated with them? Have your contract and/or grant officers been aware of the Act?

Consider including answers to the following questions into your testimony to help Councilmembers understand the impacts of indirect costs of your organization:

- Did you previously have a grant/contract with a DC agency that underpaid your indirect costs and now they are paying your full rate?
  - How has this impacted your org's work on that specific grant/contract?
  - How has this impacted your org, generally?
- If you negotiated/renegotiated your rate with the District, what was that experience like? Difficult or easy? Was your government partner knowledgeable about the Act and the process, generally? If not, did you have to educate your government partner about the Act, and if so, how was that experience?
- Historically, if you have had your indirect rate underpaid, how has your organization had to work around that shortfall? How much additional staff time/effort would you estimate that filling in those budget gaps would take each fiscal year? Can you quantify how difficult it is to raise money to cover indirect costs versus raising money to fund innovative programming?
- How would running your org change if you consistently were provided your organization's indirect costs on all your government grants and contracts?
  - How would it impact the community and the population you serve?

By fully funding the indirect cost rates, nonprofit organizations can use other private/unrestricted dollars to secure qualified staff, spend on programs, and elevate service delivery. In doing so, the District will spark a culture shift across government to a more equitable relationship, one of mutual respect between government and their nonprofit partners.”

## **5. Ongoing Recommendations:**

- **Ensure ongoing OCP training to all contract/procurement officers in all District agencies and Executive Branch offices that manage contract funds and 3rd party pass-through contracts.** This training should include 1) a summary of the Act and its goals; 2) standard language to include in solicitations; 3) the 5 ways in which a nonprofit can determine their indirect cost rate; 4) how Federal indirect cost rates should be managed by pass-through entities; and 5) how to negotiate indirect cost rates with partner nonprofits.



- **Ensure ongoing EOM/OCA training to all grantmaking officers in all District agencies and Executive Branch offices that manage grant funds and 3rd party pass-through contracts.** This training should include 1) a summary of the Act and its goals; 2) standard language to include in solicitations; 3) the 5 ways in which a nonprofit can determine their indirect cost rate; 4) how Federal indirect cost rates should be managed by pass-through entities; and 5) how to negotiate indirect cost rates with partner nonprofits.
- **Conduct a cost study/survey of District agencies/offices regarding their spending with nonprofits to determine gaps in indirect cost rates and assess any complications.** The Executive shared with the Coalition its intent to create a database of contracts held with nonprofits throughout the government to determine overall gap in funding indirect costs rates. The Executive further plans to assess any factors – such as federal pass-through funding stipulations – which may impact a nonprofit’s indirect costs.
- **Councilmembers, Committee Staff should adjust agency budgets as able to allow for adequate funding to nonprofit partners in FY24.** A common nonprofit challenge is when their indirect cost rate is eventually honored, final grant awards did not reflect any modification (increase) to accommodate the correct rate. In practice, this means some nonprofits have had to reduce services or settle for a lower indirect rate. Marginal increases in grant awards (7-10% in most cases) would resolve this challenge.
- **Agencies should consider annual adjustments to their nonprofit partners grants and contracts to account for inflation and COLA.** Today, many nonprofits are operating at a deficit or having to raise millions of dollars to cover the full cost of services. In budget cycles beginning in FY24, the Mayor and Council should allocate a set amount to account for inflation and COLA, as is common in for-profit contracts, so that we can build stability and sustainability among our key nonprofit partners.
- **An Ombudsperson for nonprofits to assist with the law would be beneficial for ALL nonprofits, but *particularly* for smaller nonprofits.** Having a dedicated advocate for nonprofits, large and small, could increase awareness and consistency of application of the law within the government and throughout the nonprofit sector.