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AND REINVESTMENT (ARRA)

April 30, 2012

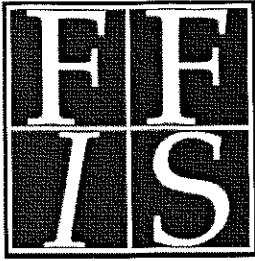
To: Department Heads and Head of State Entities
From: Kalbert Young, Director of Finance ✓
Subject: House Approves DATA Act with New Reporting Requirements for States

On April 25, 2012, the House of Representatives approved the Digital Accountability and Transparency Act of 2012 (H.R. 2146, DATA Act). The DATA Act must still pass the Senate and then be signed into law by the President. The DATA Act would mandate full multi-tier recipient reporting on the use of federal funds by recipients of all federal awards including grants, loans, cooperative agreements, contracts and other forms of federal financial assistance.

Please review the most recent summary of the DATA Act prepared by the Federal Funds Information for States (FFIS). Lynn Heirakuji and Mark Anderson have been tasked with preparing state entities to meet the requirements of the DATA Act.

Attachment (FFIS Issue Brief 12-19, April 27, 2012)

c: Lynn Heirakuji, Director, Hawaii Fair Share Initiative, Lt. Governor's Office
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Issue Brief 12-19, April 27, 2012

House Approves DATA Act with New Reporting Requirements for States

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Summary

On April 25, 2012, the House of Representatives approved the Digital Accountability and Transparency Act of 2012 (H.R. 2146, DATA Act). The bill is slightly different from the one that was reported by the House Committee on Oversight and Government Reform last year, and incorporates some feedback from state groups. While states support the overall goals of the legislation, they remain concerned about the magnitude of reporting, timelines for implementation, and lack of funding.

Specifically, the DATA Act would mandate full multi-tier recipient reporting and require recipients to report on the use of funds, although some information would be prepopulated with data from federal agencies. The bill also establishes the Federal Accountability and Spending Transparency Commission fashioned after the Recovery Accountability and Transparency Board to 1) coordinate and oversee grant and contract reporting; 2) create common data elements and data standards; and 3) focus on reducing fraud, waste, and abuse. The commission would publish the federal spending data required in the bill on the existing USASpending.gov website. USASpending.gov, the Census Bureau's Consolidated Federal Funds Report, and the Catalog of Federal Domestic Assistance would be transferred to the commission. Finally, the bill would establish an advisory committee that would include representatives from state and local governments, nonprofit organizations, and other individuals that represent the interests of recipients of federal funds and contracts. The commission and advisory committee would sunset in seven years.

Reporting Requirements

Recipient Reporting. New reporting requirements for recipients of federal grants and contracts were included in the Federal Funding Accountability and Transparency Act (FFATA, P.L. 109-282), which was fully implemented on October 1, 2010 (see [Issue Brief 10-40](#)). Like FFATA, the reporting requirements included in the House bill would cover all federal awards: grants, loans, cooperative agreements, contracts, and other forms of federal financial assistance. However, FFATA, as implemented, only captures prime and first-tier subaward reporting. The DATA Act would require full multi-tier reporting. Specifically, the DATA Act defines a recipient as: "(A) any person that receives Federal funds pursuant to a Federal award, either directly or through a subgrant or subcontract at any tier; and (B) any state, local, or

tribal government, or any government corporation, that receives Federal funds pursuant to a Federal award, either directly or through a subgrant or subcontract at any tier.”

The House bill would exempt a recipient from the reporting requirements if the recipient is an individual *and* the total amount of funds does not exceed \$100,000 in the current year (calendar or fiscal year) *or* no award received in a year exceeds \$24,999 (both thresholds adjusted for inflation). This is different from FFATA, which exempts all federal awards to individuals (unrelated to any business or non-profit organization), entities with gross incomes less than \$300,000 in the previous tax year, and awards that are valued at less than \$25,000. However, the DATA Act would allow the commission to grant additional exemptions.

The DATA Act defines several elements that must be part of recipient reporting to the commission:

- Recipient identification, including name and location
- Identification of the parent entity of the recipient, if the recipient is owned by another entity
- Identification of executive federal agency
- Identification of federal award
- Identification of the federal program, if applicable
- Total amount of federal funds received for the federal award, during the period covered by the report
- Amount of federal funds from the award that were expended or obligated during the period covered by the report
- A list of all projects or activities for which federal funds were expended or obligated
- If the federal award is a prime award, an identification of its immediate subawards
- If the federal award is a subaward, an identification of its immediate prime award
- Any additional information required by the commission

FFATA, as implemented, captures more data elements than those specifically delineated in the bill, but it does not require details on the use of funds. However, given the commission’s authority to require additional information, this could change.

The House bill requires the commission, to the extent practicable, to prepopulate its electronic systems for the submission of recipient reports with data submitted by federal agencies. Recipients would then be able to confirm that the data is correct or make corrections. Under the House bill, prime recipients would be given the option to report on behalf of subawardees (so long as all tiers are reported). FFATA requires prime recipients to report subaward information.

The DATA Act requires that the recipient reports be submitted at least

quarterly but allows the commission to establish a shorter time frame. When specifying deadlines, the commission must take into account the management and accounting system capabilities and processes of recipients as well as provide for extensions in cases of hardship or emergency. Under FFATA, prime recipients are responsible for reporting subaward and compensation data on a rolling basis, with reporting due by the end of the month following the month in which the award was made.

The DATA Act would require all recipients to register with the Central Contractor Registration (CCR) database or to complete other requirements as determined by the commission (FFATA only requires prime recipients to maintain an active registration in CCR). Similar to FFATA, the reporting requirements would be a condition of receiving federal funds. Unlike FFATA, the House bill would allow federal agencies to impose penalties (no more than \$250,000) for noncompliance.

The table below summarizes the main differences between FFATA and the DATA Act.

	FFATA	DATA Act
Prepopulation of Data	yes (partial)	yes (extent unclear)
Frequency of Reports	Monthly	at least quarterly
Subaward Reporting	first-tier	all
Exemptions	excludes individuals if total amount of funds does not exceed \$100,000 or no award exceeds \$24,999	excludes all awards to individuals, entities with annual gross incomes less than \$300,000, and awards less than \$25,000
Prime recipient responsibility	responsible for reporting subaward information	given option to report on behalf of subawardees
Penalties	condition of receiving federal funds	grant condition and monetary penalties

Federal Agency Reporting. The DATA Act would require federal agencies to report all obligations and expenditures of federal funds to the commission, including several of those data elements required for recipients. The bill specifically requires that, to the extent possible, federal agencies identify awards that are subject to the recipient reporting requirements so that information submitted by federal agencies and recipients can be compared.

The bill requires the commission to monitor federal agency compliance and report to Congress. In addition to federal agency reporting, the DATA Act would require the Department of Treasury to report on the disbursements of federal funds.

Consolidated Financial Reporting. The DATA Act would take steps to eliminate duplicate reporting for recipients. The bill would require the Office of Management and Budget (OMB) and each federal agency, no later than two years after the bill's effective date, to submit a report that identifies agency-specific reporting requirements and whether that information is already being reported to the commission by recipients. Within three years of the bill's effective date, recipients would meet the agency-specific requirements by transmitting the same information to the commission.

Data Standardization. The House bill would require the commission to designate common data elements to be reported by recipients and federal agencies. The purpose of this change would be to increase the capacity of various data systems to communicate with each other and allow data to be automatically checked for errors.

Website. The DATA Act would transfer management and control of USASpending.gov from OMB to the commission. Under the bill, the commission must make all information reported by federal agencies and recipients available to the public via USASpending.gov.

Effective Dates. Within 180 days after the effective date of the House bill, the commission must issue promulgate rules and issue guidance on recipient and agency reporting, designate common data elements, and establish one or more websites using USASpending.gov. Within one year of the effective date, federal agencies must implement the reporting requirements. Within two years after the commission determines common data elements and standards, federal agencies must issue guidance to incorporate the changes. Recipients would have 180 days after the commission has issued rules and guidance to comply with the reporting requirements.

New Commission

The House bill would establish the commission as an independent agency in the executive branch. All functions (and authority) of the Recovery Accountability and Transparency Board would be transferred to this commission. The bill would, in essence, establish the commission as a permanent successor to the Recovery Board.

Moreover, the functions of the Census Bureau's Consolidated Federal Funds Report (which was eliminated in the FY 2012 enacted budget) would be transferred to the commission. The bill would require that USASpending.gov include the total amount of federal funds obligated and spent in each state, county, congressional district, and municipality. However, it is unlikely that this information would be comparable to the Census Bureau's reports because a new data source—recipient and agency reports—would be utilized. Moreover, the Consolidated Federal Funds Report captured all federal spending, such as social security payments, other direct payments to individuals, and federal salaries. It is unclear if these payments would be reflected on USASpending.gov.

The legislation details the composition of the board, which consists of five commissioners including a chairperson (appointed by the president, with the advice and consent of the Senate). The commission would be responsible for the following activities:

- Receiving, storing, and publicly disseminating all federal spending

information under this act

- Reviewing whether recipient reporting meets applicable standards and specifies the purpose of the award and performance measures
- Identifying possible criminal activity and referring such matters to appropriate law enforcement authorities
- Providing research, and analytical and informational services to prevent and detect waste, fraud, and abuse
- Evaluating the quality of data submitted by recipients and the federal government
- Standardizing common data elements and data reporting standards
- Reviewing whether there are appropriate mechanisms for interagency collaboration relating to federal funds

The commission is also required to submit a number of reports to Congress and the president, including regular reports on data-quality audits and semi-annual reports on activities and findings of the commission as well as a report on the feasibility of collecting and publishing tax expenditure data. In addition, no later than five years after the effective date of the act, the board must submit a report that includes cost savings (both direct and indirect) as a result of the board and its activities.

The bill authorizes \$51 million annually from FYs 2012-2018 to carry out the functions of the commission. These are the only funds authorized in the bill. Additional provisions were added related to agency spending and travel to offset the federal costs of implementing the bill.

Advisory Committee

Under the DATA Act, the commission would establish the Federal Accountability and Spending Transparency Advisory Committee. The commission would appoint representatives from state and local governments, nonprofit organizations, and other individuals that represent the interests of recipients of federal funds and contracts. The purpose of the advisory committee is to submit findings and recommendations related the commission's implementation of the DATA Act.

Next Steps

While the amended version of the DATA Act addresses some state issues, states remain concerned about the bill's timelines and lack of funding. The bill does not include a funding mechanism, such as new funding or the ability to increase administrative caps within existing programs, to help states implement the new requirements and ensure adequate staff and data systems are available for effective implementation. Moreover, some have recommended a phased-in approach to implementing the DATA Act to allow recipients to establish processes and help mitigate data quality problems.

A similar bill was introduced in the Senate (S. 1222) in May 2011 and referred to the Homeland Security and Government Affairs Committee. Since both houses of Congress and the administration are focused on increased transparency of federal spending and efforts to reduce fraud, waste, and abuse, it seems likely that reporting changes will be forthcoming.

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