Testimony of Joanna Blotner
Director of Government Affairs, DC Action
On behalf of the Coalition for Nonprofit Equity
Committee on Public Works and Operations
FY25 Budget Oversight Hearing
April 22, 2024

Good morning Chairperson Nadeau and staff of the Committee on Public Works and Operations. My name is Joanna Blotner and I am the Director of Government Affairs at DC Action. DC Action uses research, data, collective action, and a racial equity lens to break down barriers that stand in the way of all kids reaching their full potential. We also convene four coalitions composed predominantly of nonprofit direct service providers (the Home Visiting Council and the Under 3 DC, Out-of-School-Time, and Youth Economic Justice and Housing Coalitions) and we serve on the Steering Committee for the DC Coalition for Nonprofit Equity. I am testifying today on behalf of the Steering Committee of the Coalition for Nonprofit Equity.

The Coalition believes that community-based nonprofit service providers are critical players in combating the effects of poverty on children, youth, and families and are important partners to the DC government in fulfilling the District's duty to its residents. We are grateful to the Council and Mayor for passing the Nonprofit Fair Compensation Act of 2020 (L23-185; D.C. Official Code § 2-222). This was a critical step forward in recognizing the true costs that nonprofits take on when providing services for District residents through DC government grants and contracts.

However, while the law became effective in March 2021, **three years later it is still not being consistently or fully implemented.** Due to lack of payment for true costs, nonprofits face a loss every time they accept a DC grant or contract. Organizations are then left scrambling to fill the gaps with other sources of revenue, often private philanthropic grants that are not long term. This is putting nonprofit service providers in a perilous position, with many being forced to consider cutting services, staffing, and more in order to partner with the District as a service provider. This is not only harming the District's nonprofit partners, but it is also causing very real harm to District residents by putting critical services at risk.

Years of not having true costs covered, flat funding, and increasing costs - all amidst increasing need for social services - have created an untenable situation for nonprofits, and this cannot continue. Action and funding is needed now to bolster the work of District nonprofits and the nonprofit workforce. The average nonprofit salary in DC is $44,000, indicating that they are "asset-limited, income constrained." By contrast, to live comfortably in the Washington region, a single individual (without children) must earn at least $76,194, as of 2023, and to live within the District's boundaries can increase an employee's cost of living expenses significantly. In a recent study by the National Council of Nonprofits, 45% of nonprofit employees reported they were thinking of leaving their jobs because they can't afford to stay.

If we wait any longer to fully fund this Nonprofit Fair Compensation law, the nonprofit workforce will be decimated and will not be able to perform the critical services that our community needs. With more than one fifth of Black District residents living below the official poverty measure and current violence unprecedented since the 90s, this is no time to let the foundation of our community services crumble.

The District was a leader in passing the Nonprofit Fair Compensation Act yet is now failing to enact the law they passed. If the nonprofit sector is to survive, keep and train talented staff, and continue to provide the quality services that residents deserve, the sector must be treated equitably and fairly. Paying the true operating costs - on top of direct service costs - is the first step in that direction.

We are requesting that the Office of Contracting and Procurement take the following actions to effectuate the full implementation of the law:

- Ensure that indirect costs are to be paid *in addition* to direct costs for all non-profit contract agreements executed by OCP.
- Ensure regular and ongoing training for contracts officers in OCP and across all District agencies to improve full and consistent compliance with the law.

The Office of Contracting and Procurement has been a leader in recent months in ensuring that RFPs released include the language of the law. This is an important step forward, and taking the above actions will move OCP and the District closer to full implementation - and eventual full funding - of the law. This law supports the livelihood and workforce challenges of the nonprofit sector, the very workforce which supports vulnerable populations across DC. Included in my written testimony are supplemental materials detailing the District's noncompliance with the law and the risks associated.

Thank you for this opportunity to share feedback from the Coalition for Nonprofit Equity and I am happy to answer any questions.

Background: Coalition Op-Ed published in the Washington Business Journal
https://www.bizjournals.com/washington/news/2023/11/13/washington-nonprofit-fair-compensation-act.html

The District of Columbia's nonprofit charitable organizations touch the lives of thousands of D.C. residents every day. In areas such as prenatal support, food security, early childhood, youth engagement into adulthood, workforce development, health care and homeless services, the District government contracts for vital services in every neighborhood of our city. Nonprofits respond with expertise, empathy and loving support 24 hours a day.

The D.C. government, through grants and contracts, purchases services for our city's residents from the nonprofit sector. But for years, they have underpaid the organizations doing the work for their true costs.

In 2018 and 2019 nonprofit leaders advocated for a change, and through considerable advocacy and the leadership of two key city council members — Brianne Nadeau and Robert White Jr. — the Nonprofit Fair Compensation Act of 2020 was unanimously passed and written into law. This should have been good news for the social services sector. However, the government is neither implementing nor funding the law.

The costs that the administration has refused to cover are known in nonprofit jargon as "indirect costs" or "overhead." These are costs every business and government has, such as paying for rent, accounting and technology. Due to lack of payment for true costs, nonprofits face a loss every time they accept a D.C. contract or grant. Organizations then have to scramble to fill the gaps with some other source of revenue.

This chronic underfunding can cause an agency to have to cut staff and can even lead to closure. Some years ago the Green Door, an important mental health provider, shut down, and others, like Joseph's House, a lifeline for chronically ill low-income men, are struggling to survive.

Despite the nonprofit sector's advocacy to encourage the District government to implement the new law, we have been repeatedly ignored. Contracts are still regularly offered without language that reflects the law. While some (often larger) nonprofits have been able to advocate for the law to apply to their contracts, smaller organizations do not always have that ability.

It is time for the District government to follow the law and treat its nonprofit partners with the support we deserve and which the government itself and the profit making contractors are provided.

In the early months of the 2024 fiscal year, the city has once again not budgeted adequate funds to cover the costs of the services and supports they rely on every day. The government has grown comfortable knowing that the nonprofit agencies, due to their mission driven commitment to our city's neediest residents, will do the work anyway while working tirelessly to raise the funds. Instead, the government should pay for the full cost of services and nonprofits

could instead utilize their philanthropic partnerships for services that are innovative or in response to emerging needs.

The city was a leader in passing the bill and is now failing to enact the law they passed. The nonprofit sector is proud of our relationship with the District government and the services we provide. But the government is not showing us mutual respect. If the nonprofit sector is to survive, keep and train talented staff, and continue to provide the quality services that residents deserve, the sector must be treated equitable and fairly. Paying the true costs of the service delivery is the first step in that direction.

Now is the time for Mayor Muriel Bowser and her cabinet members to take this law seriously. They should not continue to make promises and take meetings that lead nowhere. This situation is one that every citizen should know about and want to see rectified. Mayor Bowser and her cabinet members' lack of commitment to the law allows deeply unfair practices to continue and puts the social service network in undue peril.

Background: Coalition's Lawyer Letter to the Mayor

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November 10, 2023

The Honorable Muriel Bowser
Executive Office of the Mayor
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Mayor Bowser,

I represent the Coalition for Nonprofit Equity and write today regarding the District of Columbia's implementation of the "Nonprofit Fair Compensation Act of 2020" (the Act). The Coalition for Nonprofit Equity is a collective of more than 600 community-based nonprofit organizations in the District. We do not believe that the District is in compliance with the requirements under the Act, and ask that you continue to support the District's nonprofits by fully implementing the Act without delay. Specifically, we request that you:

- Adopt standard contractual and grant language across all District agencies to effectuate the law;
- Include sufficient funding in the FY25 budget to ensure that the District may be in compliance with the law; and
- Propose for public comment regulations that would set clear guidelines and processes for the implementation of the law.

Further, the Coalition for Nonprofit Equity would like to meet with you to discuss the District's implementation of the Act and how we can work together to ensure that nonprofits receive equitable and fair compensation, as required by the Act.

We provide more information regarding the Act and our recommendations below.

Background

In 2020, the DC Council passed the Act, and in January 2021 you signed the bill into law. The Act requires that grants and contracts between the District and nonprofit organizations compensate the organizations for indirect costs at the same rate each organization has negotiated to receive for a current federal contract or grant, if applicable, and to create a mechanism to determine an indirect cost rate for a nonprofit organization that does not have a negotiated federal rate.

The Act requires that, unless otherwise provided for by law, nonprofit organizations shall be

compensated for indirect costs incurred in provision of goods or performance of services within the terms of any grant or contract with the District 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 be compensated for indirect costs:

> (1) As calculated using a de minimis rate of 10% of all direct costs under the grant or 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 nonprofit organizations may request to renegotiate indirect cost rates pursuant to subsection (c) of this section; *or*
> (4) As calculated with a percentage rate and base amount, determined by a certified public accountant using the nonprofit organization's audited financial statements from the immediately preceding fiscal year, pursuant to the OMB Uniform Guidance, and certified in writing by the certified public accountant.

The Act also states that if the funding for a grant or contract comes from a federal agency, indirect costs shall be compensated consistent with the requirements for pass-through entities in 2 C.F.R. § 200.331, or any successor regulations. Importantly, each contract and grant awarded by the District is required to include an indirect cost compensation clause that obligates the contractor or grantee to pay indirect costs to any nonprofit organization subcontractor or subgrantee at the same rate as the nonprofit organization would receive as a contractor or grantee with the District. Lastly, the Act provides scaling effective dates based on the grant or contract amount (ranging from less than $1M – more than $25M).

Since the passage of the Act, in 2023 the District conducted two listening sessions, during which District representatives noted that they have done trainings for various District departments. However, our understanding is that the Act is still not fully implemented across all District grants and contracts, and serious concerns remain that two years after the enactment of the Act, many nonprofits are still unable to avail themselves of their legal rights as guaranteed in the Act. We urge the District to comply with the law now and act in accordance with the legally mandated effective date therein.

<u>Recommendations</u>

1. **Adopt standard contractual and grant language across all District agencies to effectuate the Act.**

In cases where District departments and agencies have complied with the Act by including language regarding the Act in grant and contractual language, we have observed a wide variation in language employed, leading to confusion among non-profits, inequitable outcomes, and, presumably, contracts signed and grants awarded at rates inconsistent with the Act's requirements.

With respect to contracts, we reviewed a sampling of agency contract solicitations for FY23. We found that three contracts did not refer to the Act and specifically noted that the contractor should not include indirect costs. We found another three examples which failed to mention the Act and linked to a 2010 document on "standard contract provisions in DC" which did not include information in the Act. Our research on District grants was also troubling: of the FY23 grant solicitations we reviewed, three did not mention the Act and capped indirect costs at 10 percent, two failed to mention the Act or indirect costs, and two mentioned NICRA or a 10 percent indirect cost rate cap, but did not describe the other three rate methodologies authorized under the Act.

To fully implement the Act, we request that the District adopt clear and uniform language in all of its contracts and grants. Specifically, we recommend that the District adopt language similar to that already developed and utilized by the District's Department of Behavioral Health to expressly implement the Act, namely:

> *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 a percentage rate and base amount, determined by a certified public accountant using the nonprofit organization's audited financial statements from the immediately preceding fiscal year, pursuant to the OMB Uniform Guidance, and certified in writing by the certified public accountant.*
>
> *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.*
> *B.7.2 The Contractor shall pay its subcontractors which are nonprofit organizations the same indirect cost rates as the nonprofit organization subcontractors would have received as a prime contractor.*

This language clearly sets out the requirements and provisions of the Act, and should be adopted widely to ensure that the District is in compliance with the Act.

2. **Include sufficient funding in the FY25 budget to ensure that the District may become compliant with the law.**

To ensure full compliance with the Act, we ask that the District include sufficient funding in the upcoming budget and future budgets. The District's Chief Financial Officer noted in an October 29, 2020 Fiscal Impact Statement (which was incorporated by reference into the Act) that Funds are sufficient in the FY 2021 through FY 2024 budget and financial plan to implement the Act.

To date, however, it is our understanding that the District has not committed sufficient funding to comply with the Act, but rather envisions that overall reimbursement or services for non-profits would be cut, which is surely in conflict with the purpose of the Act. That Fiscal Note also stated that the Office of Contracting and Procurement had $200,000 in FY 2021 to produce a comprehensive report on the indirect cost rates of District contractors, and that such study would provide some clarity on the range of indirect cost rate across District agencies and contractors.

We urge the District to include sufficient funding in the upcoming budget to operationalize the Act, and to gauge funds that will be needed in the future to fully comply with the Act.

3. **Propose for public comment regulations that would set clear guidelines and processes for the implementation of the law.**

Given the confusion and inconsistent compliance with the Act heretofore, we strongly urge the District to propose for public comment regulations stating clear guidelines and processes to implement the law. The Act stipulates that the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules to implement the provisions of the Act. Clarifying the rights of non-profit organizations under the Act could be best addressed via District rulemaking and guidance.

While we recognize that the District has appointed an ombudsman to manage compliance with the Act, we urge the District to establish a permanent, funded career ombudsman office to ensure that one District entity has continuing responsibility for compliance with the Act. Such an office should be charged with response to non-profit organization queries, periodic audits of District contracts and grants to ensure compliance with the Act, consistent timelines and forums for District staff education regarding the requirements of the Act, and, most importantly, template language for all grants and contracts.

Lastly, we strongly urge the District to promptly issue rules to ensure compliance with the Act, as was contemplated and is expressly provided in the Act itself. The District should implement all aspects of the law, including through the establishment of a process for non-profits to negotiate a new percentage indirect cost rate with the awarding agency.

Conclusion

On behalf of the Coalition for Nonprofit Equity, I look forward to continued dialogue with the District to ensure full compliance of this important Act for District residents and non-profits. Please let me know when you may be available for a follow-up conversation about the District's implementation of the Act and the recommendations set forth in this letter.

Sincerely,

Cybil Roehrenbeck
Partner

cc. Brian Schwalb, Attorney General for the District of Columbia
Lindsey Parker, Chief of Staff to Mayor Bowser