SEC. ___. REVISION TO EXECUTIVE COMPENSATION REPORTING REQUIREMENTS APPLICABLE TO CONTRACTS OR SUBCONTRACTS SUBJECT TO COST ACCOUNTING STANDARDS.

Section 2(b)(1)(F) of the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282; 31 U.S.C. 6101 note), as amended, is amended by inserting "for contracts and subcontracts described in subsection (a)(4)(A)(ii) for which cost accounting standards are applicable," before "the names".

Section-by-Section Analysis

This proposal would reduce burdens associated with government-unique reporting requirements by narrowing the requirement for federal contractors to report executive compensation costs of their most highly compensated officers under the Federal Funding Accountability and Transparency Act of 2006 (FFATA, Public Law 109-282, as amended, codified at 31 U.S.C. 6101 Note), so that it only applies to contractors or subcontractors who are subject to cost accounting standards. Generally, executive compensation data is not used in making procurement decisions. Therefore, limiting executive compensation reporting requirements will reduce unnecessary costs associated with doing business with the government.

FFATA mandates that Federal contractors and subcontractors must reveal names and total compensation of their five most highly compensated officers if (1) the company's Federal awards equate to at least 80 percent of annual gross revenue; (2) such awards account for at least $25 million in annual gross revenue; and (3) public information on executive compensation is not available through other channels, such as reports required by the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

These statutory requirements were implemented via a pilot program on August 29, 2007, as well as through several relevant changes to the Federal Acquisition Regulation (FAR), effected between 2009 and 2014. The current language at FAR Subpart 4.14 and clause 52.204-10 paragraphs (d)(1) and (d)(3) stipulate that, under the conditions listed above, Federal contractors shall report the names and compensation details of their top five executives, as well as the top five executives of their first-tier subcontractors.

The data are centrally reported to the GSA System for Award Management (SAM). If the data are already publicly available via reporting to the Securities and Exchange Commission, the contractor (or subcontractor) must still report in SAM and reference the public availability. The FAR Council's determination that this reporting requirement is responsible for more than 55,000 hours of paperwork burden each year does not reflect the burden incurred by first tier subcontractors who are not registered in SAM. A statistical analysis of the SAM compensation data shows that of the approximately 4,700 unique respondents, just over half are small

businesses.[1]

When passing the Digital Accountability and Transparency Act of 2014 (P.L. 113-101, codified at 31 U.S.C. 6101 et seq.), Congress called on OMB and agencies to identify "unnecessarily burdensome reporting requirements for recipients of Federal awards." See section (a)(3) of P.L. 113-101. Public comment received both during the development of the rule and in response to public notices issued in connection with renewal of the information collection have repeatedly questioned the value that justifies this ongoing burden. Additionally, unnecessary exposure of contractor business information creates a disincentive to do business with the government.[2]

This proposal is designed to address these concerns and reduce burden by limiting disclosure to contractors and subcontractors who are subject to cost accounting standards under 41 U.S.C. 1502. It is in these situations that the disclosed compensation information is most likely to be considered, such as in determining if these costs, where they are allowable, are being measured, assigned and allocated in a uniform and consistent manner across the contractor's contracts. By creating this tighter nexus between disclosure and potential use of the information in the procurement process, the proposal will lower the cost for contractors (and their first tier subcontractors) doing business with the government and eliminate the need for the government to maintain database information that is not used in making Federal contract awards.

Budget Implications: There would be no budgetary impact for civilian agencies as a result of this legislative change because the proposal only addresses a reporting requirements for contractors and therefore does not affect the overall budget requirements of agencies.

Changes to Existing Law: This proposal would amend section 2 of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note) as follows:

SEC. 2. FULL DISCLOSURE OF ENTITIES RECEIVING FEDERAL FUNDING.
(a) Definitions.-In this Act: * * * * *
(4) Federal award.-The term "Federal award"-
(A) means Federal financial assistance and expenditures that-
(i) include grants, subgrants, loans, awards, cooperative agreements, and other forms of financial assistance;
(ii) include contracts, subcontracts, purchase orders, task orders, and delivery orders;

[1] The Integrated Award Environment Program Office reviewed a random sample of 161 respondents. There is a 99% certainty that a survey of the entire population would produce a figure between 42% and 62% for the small business portion.

[2] See, for example, Federal Register Notice for Information Collection 9000-0177, Reporting Executive Compensation and First-Tier Subcontract Awards at 80 FR 36341: https://www.federalregister.gov/articles/2015/06/24/2015-15516/submission-to-omb-for-review-federal-acquisition-regulation-reporting-executive-compensation-and.; (one respondent to the information collection explained that it represents numerous defense and aerospace companies that are "significantly affected by" the reporting requirement. http://www.regulations.gov/#!documentDetail;D=FAR-2015-0055-0026); Acquisition Reform Working Group (March 2013). 2013 Legislative Recommendations. Available at http://www.ndia.org/Advocacy/LegislativeandFederalIssuesUpdate/Documents/2013%20ARWG%20Legislative%20Packet%20FINAL.pdf; and 75 FR 39414 (summarizing public comments on the interim rule implementing FFATA).

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(b) In General.-

(1) Website.-Not later than January 1, 2008, the Office of Management and Budget shall, in accordance with this section, section 204 of the E-Government Act of 2002 (Public Law 107–347; 44 U.S.C. 3501 note), and the Office of Federal Procurement Policy Act ([former] 41 U.S.C. 403 [401] et seq.) [now division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41], ensure the existence and operation of a single searchable website, accessible by the public at no cost to access, that includes for each Federal award-

(A) the name of the entity receiving the award;

(B) the amount of the award;

(C) information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source, and an award title descriptive of the purpose of each funding action;

(D) the location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country;

(E) a unique identifier of the entity receiving the award and of the parent entity of the recipient, should the entity be owned by another entity;

(F) **<u>for contracts and subcontracts described in subsection (a)(4)(A)(ii) for which cost accounting standards are applicable,</u>** the names and total compensation of the five most highly compensated officers of the entity if-

(i) the entity in the preceding fiscal year received-

(I) 80 percent or more of its annual gross revenues in Federal awards; and

(II) $25,000,000 or more in annual gross revenues from Federal awards; and

(ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. [; and]

(G) any other relevant information specified by the Office of Management and Budget.

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(2) Reporting of subawards.-

(A) In general.-Based on the pilot program conducted under paragraph (1), and, except as provided in subparagraph (B), not later than January 1, 2009, the Director-

(i) shall ensure that data regarding subawards are disclosed in the same manner as data regarding other Federal awards, as required by this Act; and

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