



# A Look Back on 2021 and Ahead to 2022 for Non-Profit Grant Recipients



**Dismas “Diz” Locaria**

Partner | +1 202.344.8013 | [dlocaria@Venable.com](mailto:dlocaria@Venable.com)

**VENABLE** LLP

# Agenda

## A Look Back on 2021

- PPP Loan Forgiveness
- China Initiative Enforcement
- Regulatory Updates

## A Look Ahead to 2022

- Infrastructure
- Build Back Better?
- Regulatory Updates



---

# A Look Back on 2021

---

# PPP Loan Forgiveness

<b>As of 1/9/22</b>	<b>By Loans</b>	<b>By Dollars</b>
Total PPP Volume (2020-21)	11,444,981	\$790,765,202,677
Applications for Forgiveness	9,408,548	\$680,813,821,189
Payments (i.e., amount forgiven)	9,286,773	\$668,564,169,713

# PPP Loan Forgiveness

First Draw PPP loans made to eligible borrowers qualify for full loan forgiveness if during the 8- to 24-week covered period following loan disbursement:

- Employee and compensation levels are maintained;
- The loan proceeds are spent on payroll costs and other eligible expenses; and
- At least 60% of the proceeds are spent on payroll costs.

Second Draw PPP loans made to eligible borrowers qualify for full loan forgiveness if during the 8- to 24-week covered period following loan disbursement:

- Employee and compensation levels are maintained in the same manner as required for the First Draw PPP loan;
- The loan proceeds are spent on payroll costs and other eligible expenses; and
- At least 60% of the proceeds are spent on payroll costs.

**CAUTION:** Guidance from federal agencies are not allowing the inclusion of PPP covered costs in direct or indirect funding requests, or alternatively forgiveness of PPP loans if the same costs were covered directly or indirectly by other federal funds.

# China Initiative Enforcement

Per DOJ's Website:

- About 80 percent of all economic espionage prosecutions brought by the U.S. Department of Justice (DOJ) allege conduct that would benefit the Chinese state, and there is at least some nexus to China in around 60 percent of all trade secret theft cases.
  - The Department of Justice's China Initiative reflects the strategic priority of countering Chinese national security threats and reinforces the President's overall national security strategy.
  - In addition to identifying and prosecuting those engaged in trade secret theft, hacking, and economic espionage, the Initiative focuses on protecting our critical infrastructure against external threats through foreign direct investment and supply chain compromises, as well as combatting covert efforts to influence the American public and policymakers without proper transparency.
  - The China Initiative is led by the Department's National Security Division (NSD), which is responsible for countering nation-state threats to the United States.
- The DOJ website lists more than 50 example cases since 2018 (15 in 2021) related to the China Initiative, many of these were brought against academic researchers operating under federal grants. *See* <https://www.justice.gov/nsd/information-about-department-justice-s-china-initiative-and-compilation-china-related>
  - Rule of Thumb – Read your agreements closely and appropriately disclose other funding sources as required.

# Regulatory Updates

## Domestic Preferences

- On January 25, 2021, President Biden signed an [Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers](#)
  - "United States Government should, whenever possible, procure goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America's workers thrive."
  - Among other policy goals, the EO increases domestic participation in federal contracting by adding layers of oversight.
- On July 30, 2021, proposed regulations issued to the [stated](#) goal of strengthening the Buy American Requirements by closing loopholes in the current regulation, applying enhanced price preferences to select critical products, and increasing transparency and accountability in Buy American rules.
- While the changes do not necessarily impact most federal grants, they may make their way into grant requirements, particularly infrastructure related projects (to be discussed).

# Regulatory Updates

## Section 889

- National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115-232)
- Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment
- Became public law on August 13, 2018
- Intended to mitigate supply chain risks caused by foreign intelligence threats
- Grants – effective August 13, 2020:
  - Cannot pay for prohibited products or services with federal grant funds
  - Includes payment for same via indirect costs
  - Costs need to be placed in unallowable cost pool and paid with unrestricted funds
  - *See 2 C.F.R. 200.216 & 200.471*
- Limited waivers
  - USAID waiver
- Limited interpretations

# Regulatory Updates

## Minimum Wage

- President Biden issued EO 14026 on April 27, 2021 seeking to increase the minimum wage for federal contractors to \$15 per hour.
- DOL issued a final rule on Nov. 22, 2021.
- Applies to “covered contracts” effective Jan. 30, 2022
  - The final rule made clear that this does not encompass grants, but
  - It does apply to cooperative agreements.
- The final rule provides that the new requirement will apply to new contracts and be included in new solicitations as of Jan. 30, 2022.
  - However, agencies have been “strongly encouraged” to include this requirement in existing contracts and solicitations (prior to Jan. 30, 2022).
- Since cooperative agreements are largely cost-reimbursable, the wage increase should be passed on to the government without much resistance.

# Regulatory Updates

## COVID Vaccine

- President Biden issued EO 14042 on Sept. 9, 2021 attempting to require all or the majority of the workforce for federal contractors (under service contract) to become vaccinated for COVID-19.
- Safer Federal Workforce Task Force issued guidelines, as did many agencies.
- Applies to “covered contracts”, again
  - This does not encompass grants, but
  - It does apply to cooperative agreements.
- Enjoined by several courts, currently tied up in litigation and not being enforced



---

# A Look Ahead to 2022

---

# Infrastructure

- On Nov. 15, 2021, President Biden signed the \$1.2 trillion Infrastructure Investment and Jobs Act (“IIJA”).
- IIJA includes funding for new grant programs (formula and competitive) and increased funding for existing grant programs (competitive).
- Most funds will flow through these federal programs to states with contracts and grants being awarded by primarily state, tribal, and local or regional governmental entities and with some direct federal funding and private-public projects also being available.
- Each federal government authority may be able to execute an initial OT Agreement (“OTA”) up to \$250M. There are three (3) primary types of OTAs:
  - Prototyping OTA
  - R&D Agreements
  - Production OTA

# Build Back Better?

- Originally more than \$2 trillion in spending
- Biden still pursuing
- Being discussed between White House and key Democratic Senators
- Still attempting to include significant climate change programs
- Anyone's guess on whether this gets done, but time is ticking until campaign season

# Regulatory Updates

## Domestic Preferences

- Jan. 19, 2022, the White House created a “Made in America” Council to better synchronize domestic preference laws.
  - There is a recognition that these laws have become confusing and disparate.
  - The hope is that this council will bring coordination and harmony to the varying rules and requirements.
    - Nevertheless, since most of the rules are underpinned by statute, may require statutory overhaul.
- In the meantime, IIJA expands domestic preference requirements for grants and contracts and adds more stringent domestic content and Buy America rules to all federally funded infrastructure and public works projects.
  - Buy American Act:
    - Provisions impose a domestic preference on all infrastructure projects that receive federal funding at federal, state, and local levels.
    - While this is a “preference”, many agencies view it as a requirement.
  - Berry Amendment: Provisions ensure all PPE purchased by Departments of Homeland Security, Health and Human Services, and Veterans Affairs are Berry Amendment-compliant (containing 100% domestic content).

# Regulatory Updates

## Section 889 & Minimum Wage

- Section 889
  - USAID waiver expires later this year (Sept. 30, 2022)
  - Indicators that more lenient guidance may be forthcoming
- Minimum Wage
  - Minimum wage standard of \$15/hr .went into effect on Jan. 30, 2022.
  - Currently being challenged by at least seven states in two courts
    - U.S. District Court for the District of Arizona
    - U.S. District Court for the Southern District of Texas, Victoria Division
  - Overall status:
    - Generally, still in effect for govt. contractors and recipients of CoAgs
    - 10<sup>th</sup> Cir. recently issued a nation-wide injunction from enforcing the rule against seasonal recreational companies – the rule was applicable to seasonal recreational companies operating on federal land

# Regulatory Updates

## COVID Vaccine

- As noted, last year, the COVID vaccine mandate EO was enjoined by several courts.
- On Jan. 21, 2022, the George Federal District Court issued an order stating that:
  - Its injunction applied only to the vaccine mandate portion of the EO; and
  - Other aspects – masking, social distancing, and the designation of a coordinator – were not enjoined.
  - The court declined to opine on whether employers were permitted to enter into voluntary agreements modeled after the EO’s requirements.
- Other enjoining courts have not provided this clarity.
- Agencies have not modified their guidance to parse the enforcement of the implementing contract clauses.
- Circuit Courts have upheld lower court injunctions.
- What does this mean?
  - Current uncertainty
  - Awaiting a final decision on this by the Supreme Court

# Questions?



**Dismas Locaria**

Partner

+1 202.344.8013

[dlocaria@Venable.com](mailto:dlocaria@Venable.com)

---

# Save the Date!

March 24, 2022, 12:00 – 1:30 p.m. ET  
Washington, DC

---

**VENABLE** LLP



© 2022 Venable LLP.

This document is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address.

**VENABLE** LLP