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Taxation of Moving Expenses – What You Need to Know

By Ryan Byrd, CPA, CFE and Mia Bautista, CFE, PMP | October 11, 2018

What happened?
Effective January 1, 2018, moving expenses are taxable income to an employee.

All moving expenses either paid by an organization to a vendor (for example, paid to a moving or storage company, or to an airline) or reimbursed to an employee, are Form W-2 taxable wages to the employee. In addition, the employee may not deduct the moving expenses on their federal individual income tax return. There is no longer a distinction between "qualified" and "non-qualified" moving expenses – all are taxable compensation. The employee will owe federal income tax, Social Security and Medicare tax and state tax, if applicable, on the moving expenses which are added to Form W-2 taxable wages.

This rule applies to domestic and international moves. For employers with US employees living and working overseas, this rule applies to all international moves by US employees – both moves to and from the US, and moves between two foreign locations.

This rule applies only to expenses paid or reimbursed for moves which took place in 2018 and future years (IRS Notice 2018-75, September 21, 2018).

If an employee qualifies for the Foreign Earned Income and Housing Exclusion (Form 2555) the employee may deduct the moving expenses included as taxable compensation, up the total annual income exclusion amount ($103,900 in 2018). If the employee's total compensation eligible for the exclusion is over the annual exclusion amount, the employee will pay federal income tax on the moving unless they have Foreign Tax Credits available to offset the federal income tax.

Should the employee or the organization pay the tax on the moving expenses added to the W-2?
Whether the employer or the employee should be responsible for the tax on the moving expenses depends on your organization's relocation policy, tax policy, if applicable, compensation philosophy, finances and funding. The decisions other organizations in your sector make may also influence your approach because it may impact your ability to attract and retain employees.

Previously "qualified" moving expenses, which in general were the "big ticket" items such as the shipment of household goods, the cost of the employee and their family's travel to the new work location and, in some cases storage, were tax free to the employee. For more than twenty years, when these expenses were paid to a vendor on behalf of an employee, or reimbursed to an employee, these expenses were not included in an employee's Form W-2 taxable income. In addition, in certain situations, the employee was allowed to deduct moving expenses on their US federal income tax return ensuring that the employee would not pay federal income tax on "qualified" moving expenses.

Therefore, many relocation or tax policies do not specifically address whether the employer or the employee is responsible for the tax on "qualified" moving expenses. For the same reason, offers, assignment letters and other employer/employee communication has been silent on this issue. For many organizations, this issue will now need to be addressed as soon as possible.

To read more visit http://bit.ly/PSC_BRG2018.

How to Design Social and Behavior Change Communications for Countering Violent Extremism: A Multi-Sectoral Approach

Violent extremism's threat to democracy and citizens' security is growing and changing faster than domestic and international constituencies' ability to contain it. Countering violent extremism (CVE) experts are urgently searching for effective means to prevent more people from embracing violent extremism and to prompt current violent extremists to abandon their efforts. Messaging and media are frequently cited as tools used to address CVE, but not much empirical evidence shows what type of messaging and media accomplish the behavioral and systemic changes needed for CVE. Based on the limited data on social and behavior change communication (SBCC) in CVE programming and proven best practices from other disciplines, including health, education, neuroscience, and youth programming, we propose SBCC as a promising CVE methodology and offer key principles for designing, implementing, and assessing this technical approach.

What is SBCC and Why is it Important to CVE?

SBCC is a research-based, consultative, participatory process that uses communication to facilitate social and behavior change required to improve specific outcomes, such as CVE. SBCC recognizes that individuals' behavior depends on larger group, environmental, and structural systems and norms (e.g., gender, cultural, and communal), and aims to incite change throughout those levels using three main elements: 1) communication using messages, materials, and interventions that fit the population's needs and preferences; 2) behavior change through efforts to make specific actions easier, feasible, and closer to an ideal that will prevent violent extremism; and 3) social change to achieve shifts in participation and engagement, policies, and gender norms and relationships.

Given that SBCC draws on neuroscientific considerations of what drives human behavior, it serves as a promising approach to CVE. SBCC capitalizes on target populations' familiarity with technology-driven messaging approaches used by violent extremist groups yet broadens the scope to include person-to-person and community interventions to achieve long-term social and behavior changes.[1]

Based on research findings, we have identified the following SBCC interventions used in the CVE space:

- Counter-messaging: Uses facts to dismantle assumptions and refute violent extremists' claims. Examples include direct in-person or online discussions with potential recruits and counter-imaging, which involves deromanticizing extremism by using images of what actually happens on the ground. Data has shown that counter-messaging is rarely effective as part of CVE interventions given that it appeals to logic more than the fundamental drivers of human behavior.

- Counter-narratives: Involves strategically constructed storylines that guide behavior by shaping how target populations feel about or understand events or issues and reinforcing values that are incompatible with violent extremist groups' values.[2]

- Interpersonal communications (IPC): Relies on one-on-one meetings, small group meetings, and skills-building programs to address factors that entice people to engage in violent extremism. IPC provides an intimate space for individuals to discuss openly their concerns and perspectives and for gatekeepers and influencers to reaffirm messaging against radicalization. During the Ebola outbreak, Liberian village chiefs and community and religious leaders talked to their communities in small groups about the disease, stigma, prevention, and treatment. Before significant international assistance arrived, a comprehensive SBCC program consisting of these community/social mobilization efforts, as well as coordinated messages and materials, were some of the only tools available to fight the virus.

- Community mobilization: Uses community events, theater groups, school programs, and religious-based programs to address factors that attract people to violent extremism and reaffirm messaging. For example, USAID's Strengthening Community Resilience against Extremism (SCORE) activity in Kenya coordinates with actors at the government and community levels to implement community-based events, theater programming, and other peaceful outlets that reinforce counter messaging and counter narratives and enable community members to reject, question, and mobilize against radicalizing narratives.

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[1] https://www.isdglobal.org/wp-content/uploads/2017/06/CN-Monitoring-and-Evaluation-Handbook.pdf
[2] https://www.wodc.nl/binaries/2607_Summary_tcm28-286137.pdf

Key Principles for Programming

Although limited empirical data exists on the effectiveness of SBCC interventions in CVE programming, there is data from other fields on what an effective SBCC effort requires. Drawing from three case studies,[3] we offer the following principles for design and implementation:

- Conduct strong formative research (e.g., literature review, participatory activities, surveys, and observation) to guide program design, planning, and adaptation. Findings can help identify behaviors and drivers, rather than assume why target populations behave the way they do. This is a crucial SBCC step that differs from traditional approaches to programming.

- Consider designing SBCC efforts around the four areas of influence: critical significance, grievances, identity threat, and social inclusion.[4] These areas are grounded in neuroscience and psychology and can help us understand what drives individuals to join violent extremist groups.

- Design a strategic plan that responds to behaviors, drivers, and key actors identified in formative research. Pre-test messages and materials, conduct a thorough review with the intended audience and other stakeholders, and repeat testing to ensure that messages and materials remain effective.

- Give special attention to social workers in addition to influencers and gatekeepers. Research indicates that social workers were more effective in engaging individuals who were at risk of radicalization than former extremists and survivors of violence.[5]

- Pair communications with concurrent offline activities to address the enabling environment. Without concurrent activities, messaging fails to address the factors that made violent extremism appealing to individuals in the first place.[6]

- Make communications and other activities as participatory as possible to spur engagement, empower individuals and groups, strengthen leadership and advocacy, and identify salient problems and solutions.

- Conduct thoughtful monitoring and evaluation to promote learning, build in feedback loops to allow for timely adaptation, and publish what has been learned so that others can also effectively design, adapt, or assess their own programming.

Given the changing landscape and increasing urgency of violent extremism, practitioners must embrace methodologies that are evidence-based and sensitive to complex, ever-evolving environments. SBCC provides a promising, adaptive opportunity that goes beyond mass media campaigns to build an enabling environment for social and behavior change. Although current evidence for SBCC for CVE is sparse, we hope that practitioners will test this approach and share results so that we can better understand what works in SBCC for CVE and find the means to slow the growing threat of violent extremism.

For more information on the case studies driving this analysis and a step-by-step guide for designing this type of intervention, please see our primer, available on our website: High-Impact Practices: How to Design Social and Behavior Change Communications for Countering Violent Extremism.

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[3] The case studies include the USAID-funded Kenya SCORE project, the USAID-funded Health Communication Capacity Collaborative (HC3) project during the Ebola crisis, and Google Jigsaw's Redirect Method.

[4] http://www.equalaccess.org/wp-content/uploads/EAI-YouthPower-Report-1-FINAL.pdf

[5] http://www.isdglobal.org/wp-content/uploads/2018/03/Counter-Conversations_FINAL.pdf

[6] http://www.paccsresearch.org.uk/wp-content/uploads/2016/03/Countering-Violent-Extremism-Through-Media-and-Communication-Strategies-.pdf

The Country Development Cooperation Strategy—USAID's Compass on the Journey to Self-Reliance

Celebrating Memorial Day at Arlington National Cemetery, I spent the day accompanying a Gold Star family, The Pittman's from Mendocino County California, whose son Jesse, a Navy Seal was killed in Afghanistan when the Chinook helicopter that carried him and 29 other American troops was shot down. The Pittman's quietly revealed, "we are heartbroken, but proud he lost it, in fighting for a just cause." Realizing I worked in US foreign assistance they asked, "what is your cause in Afghanistan?" Without a Country Development Cooperation Strategy (CDCS) going on 17 years, I struggled to provide a response, relevant and worthy of Jesse's sacrifice--tying together the USAID Afghanistan program of 168 activities and $30 million obligated in FY18. [1]

Afghanistan is not the only country without a CDCS; USAID has programs in 117 countries, 65 with an expired or missing CDCS, across regions and priority countries. In Asia: Afghanistan, Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka and the Regional Development Mission for Asia. In Latin America: Colombia, Dominican Republic, Haiti, Guatemala, El Salvador, Myanmar, Nicaragua, Mexico and Peru. In the Middle East: Egypt, Iraq, Morocco, Syria, West Bank/Gaza and Yemen. In Europe and Eurasia: Armenia, Azerbaijan, Bosnia, Georgia, Kosovo, Moldova, Serbia and Ukraine. In Africa, Botswana, Cote d'Ivoire, Ethiopia, Kenya, Lesotho, Liberia, Malawi, Namibia, South Africa, Swaziland and Zambia.

Of nine regional missions covering 42 countries, three CDCS' are expired or missing: South Africa Regional Mission, Regional Development Mission for Asia and Regional Mission Fiji. Across two U.S. administrations, the number of current CDCS' has been trending downward: eight expired in 2016, nine expired in 2017, 15 expired in 2018, with 15 expiring this year. [2]

The requirement for a mission CDCS is addressed in the 2019 Congressional Budget Justification, Consolidated Appropriations Act 2018 and the Code of Federal Regulations. USAID's Automated Directive System Chapter 201, Program Cycle Operational Policy, states the CDCS lays the groundwork for subsequent decision-making, from project design to budget negotiations. The CDCS process takes into consideration competing priorities, development challenges in country, US foreign policy priorities and constraints, and helps a mission to choose: the most relevant, focused and effective way of working. [3]

Promoting the principles of aid effectiveness, including partner country ownership—USAID announced in August 2018, to realign and reorient its policies, strategies and program practices to improve how it supports each country on the Journey to Self-Reliance or a country's ability to plan, finance and implement solutions to address its own development challenges. It further mentions this is good for our partners around the world, our nation's security, and the American taxpayer.[4]

Advancing a country's Journey to Self-Reliance, USAID published 113 road maps for low- and middle-income countries as classified by the World Bank, omitting USAID programs in Croatia, Hungary, India and Turkey and including 24 countries with no U.S. foreign assistance funding including: Bolivia, Ecuador,

[1] Foreign Aid Explorer https://explorer.usaid.gov/
[2] Country Strategies CDCS | US Agency for International Development https://www.usaid.gov/results-and-data/planning/country-strategies-cdcs

[3] USAID's Automated Directive System Chapter 201, Program Cycle Operational Policy https://www.usaid.gov/ads/policy/200/201
[4] The Journey to Self-Reliance https://www.usaid.gov/selfreliance;

Eritrea, Iran, North Korea and Russia. Road maps provide travel options to a destination: the familiar, the scenic or the most direct route --the option Americans expect expending taxpayer dollars. [5]

ADS Chapter 201 further states the CDCS must include an explanation how the strategy will be implemented, details of projects or activities and associated financial and human resource requirements. While a determination of CDCS' focus & effectiveness can vary, a comparison of CDCS planned activities and budget versus funds obligated and number of funded activities offer insight:

- Somalia CDCS planned 5 activities with an FY18 budget of $177 million and obligated $191 million for 51 activities;
- Niger CDCS planned 22 activities with an FY18 budget of $1.6 million and obligated $41 million for 60 activities;
- Indonesia CDCS planned 164 activities with an FY18 budget of $89 million and obligated $31 million for 82 activities;
- Honduras CDCS planned 52 activities with an FY18 budget of $68 million and obligated $27 million for 61 activities;
- Georgia CDCS planned 121 activities with an FY18 budget of $34 million and obligated $39 million for 65 activities.[6]

A second aspect of CDCS' focus and effectiveness is the geographic and sector roles and responsibilities of bilateral and regional missions. No less than nine country and regional missions have overlapping roles and responsibilities. For example, the Regional Development Mission for Asia CDCS states it will focus on the Lower Mekong Region—Burma, Cambodia, Laos, Vietnam with some activities leveraging Thailand, but recent solicitations request proposals for Asia (48 countries), duplicating Asia region solicitations posted by the India, Indonesia, and Nepal

missions. The West Africa Regional (WAR) Mission CDCS states Guinea has responsibility for Sierra Leone, but Guinea CDCS does not mention this role. Moreover, the WAR CDCS states Senegal has responsibility for programs in Niger, Burkina Faso, Chad and Mauritania and regional programs in Burkina Faso and Niger, which the Senegal CDCS does not mention. A modest management investment can easily resolve duplication of field roles and reduce confusion of USAID staff and implementing partners.

Earlier this year there were some encouraging signs that would have modestly reversed the downward CDCS trend. At a USAID reform event in June at the Society for International Development, a USAID representative mentioned six CDCS were under development. However, since that announcement, there have been no new CDCS posted and 15 more expired.

The success of U.S. foreign assistance depends on partnerships—shared responsibility and risk —of over 10,000 implementers. A CDCS—relevant, focused and effective—can be the tool USAID uses to communicate its commitment to partnerships and diversifying partners and Americans, like the Pittmans who want their son remembered and the cause he served.

Chris O'Donnell is the President of Development Essentials, a U.S. Veteran Owned Small Business providing the tools and skills to organizations seeking U.S. Government funds to lead international development programs. For more information write chris@developmentessentials.us or follow on Twitter at @DevEssential

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[5] The Journey to Self-Reliance, Country Road Maps https://selfreliance.usaid.gov/

[6] Foreign Aid Explorer https://explorer.usaid.gov/

What USAID Contractors Need to Know About the June 2018 Amendment to AIDAR 752.7013 to Prevent Sexual Exploitation and Abuse

Holland & Knight

Robert K. Tompkins

Partner | Washington, D.C. | 202.469.5111 | robert.tompkins@hklaw.com

David Black

Partner | Tysons | 703.720.8680 | david.black@hklaw.com

hklaw.com

gov-con-blog.com

The past several years have seen increased focus on combating all forms of exploitation and trafficking of persons. Contractors, particularly those doing business with the State Department and USAID, have an especially important role in addressing this issue.

By now, contractors are certainly well-aware of the FAR requirements addressing human trafficking (FAR Subpart 22.17). Originally adopted in 2006, these anti-trafficking provisions were expanded significantly in early 2015. The FAR prohibits a wide array of actions including human trafficking, forced labor, commercial sex acts, withholding employee documentation, engaging in misleading or fraudulent recruiting practices, providing substandard housing and so on. Contractors doing business overseas are required to certify, prior to award of a covered contract, that they have implemented a compliance plan addressing these requirements.

Within this broader context, there has been a specific focus on preventing sexual misconduct in the context of foreign assistance. USAID has announced a zero-tolerance policy for sexual misconduct, including harassment, exploitation or abuse of any kind among USAID staff or implementing partners (*i.e.*, contractors and assistance recipients). In March 2018, USAID Administrator Mark Green established an intra-agency group—the Action Alliance for Preventing Sexual Misconduct (AAPSM)—which is charged with leading USAID's work on addressing sexual misconduct in all forms, including harassment, exploitation and abuse. The AASPM's approach is multi-faceted, but one of its key pillars is the establishment of new standards for contracts, grants and cooperative agreements. This article focuses on the new requirements for contractors, added via amendments to USAID's FAR Supplement (AIDAR) clause 752.7013.

AIDAR 752.7013 and its Requirements

Since 1989, AIDAR clause 752.7013 has provided USAID a role in dealing with contractor employees who fail to comply with the following standard of conduct: carrying out operations "in such a manner as to be fully commensurate with the responsibility [of supporting U.S. Foreign Assistance Programs]." AIDAR 752.7013 includes a contractor disclosure obligation. When a contractor determines that the conduct of any employee is not in accordance with the standard of conduct, the Contractor's Chief of Party "must consult with the USAID contracting officer and the Mission Director and the employee involved." The Mission Director then "recommends to the Contractor a course of action with regard to such employee." AIDAR 752.7013 acknowledges that the U.S. Ambassador may direct the removal/discharge of any individual from the contract if the Ambassador determines that doing so is required to protect U.S. interests. When an employee is terminated under these circumstances, the termination of the employee and replacement by acceptable substitute must be at no cost to USAID.

As part of the broader initiative discussed above, in June 2018, USAID amended AIDAR 752.7013 (through a "deviation" found here) to clarify that this standard of conduct includes "ensuring that employees act in a manner consistent with the standards for United Nations (UN) employees in Section 3 of the UN Secretary-General's Bulletin – Special Measures for Protection from Sexual Exploitation and Sexual Abuse." Section 3 of the UN's Standards for Protection from Sexual Exploitation and Sexual Abuse include six standards that prohibit a range of sexual activity, including:

- "exchange of money, employment, goods or services for sex, including sexual favors,"
- sexual relationships between UN staff and beneficiaries of assistance (whether or not money is exchanged), and
- sexual activity with persons under the age of 18, regardless of the local law regarding age of consent.

Section 3 of the UN's standards also require UN staff members who develop concerns or suspicions regarding sexual exploitation or sexual abuse by a fellow worker to report such concerns via established reporting mechanisms. In addition, UN staff are "obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse." Managers "at all levels" have a responsibility to support and develop systems that maintain this environment.

What Should Contractors Do in Light of Revised AIDAR 752.7013?

First and foremost, contractors should ensure that they are in compliance with the broader FAR requirements pertaining to anti-human trafficking, discussed briefly above. Contractors also should take the following actions to comply with revised AIDAR 752.7013 to prevent sexual abuse and sexual exploitation by employees working abroad:

- **Update Employee Standards of Conduct:** USAID contractors should **update employee standards of conduct** to confirm to the U.N. Standards for Protection from Sexual Exploitation and Sexual Abuse.

- **Inform Managers of Responsibility:** USAID contractors should inform their employees who manage =USAID programs of the responsibility to support and develop systems that prevents sexual exploitation and sexual abuse.

- **Employee Training:** USAID contractors should provide training to all employees stationed abroad on the U.N. Standards for Protection from Sexual Exploitation and Sexual Abuse, including the obligation to report any concerns or suspicions of such conduct by fellow employees.

- **Review Established Internal Reporting Mechanism:** USAID contractors should review their existing internal compliance reporting mechanism to ensure it is appropriate to handle internal reporting by employees of concerns about sexual exploitation or sexual abuse. Contractors should promptly make any necessary adjustments to the established reporting mechanism. A contractor's Chief of Party must also consult with the USAID Mission Director regarding any potential violation, which may also trigger reporting to USAID's Office of Inspector General.

- **Ensure All Subcontractors Take the Foregoing Actions:** USAID contractors should unilaterally amend subcontracts to insert revised AIDAR 752.7013 (and the FAR provisions on trafficking, if they have not already). USAID contractors should request that subcontractors take the actions listed above to ensure awareness, training, and an appropriate employee reporting mechanism are in place.

For more information please contact: [David Black](#) or [Bob Tompkins](#) at Holland & Knight, LLP

THE SMALL BUSINESS ADVANTAGE

Five Reasons to Embrace Development Entrepreneurs

PHOTO: KANAVA working with local businesses and organizations in Afghanistan during 2017 to apply KANAVA's ISD methodology and certification program to prepare them for direct USAID funding.

1 Small Businesses have talented and experienced people.

Agencies that work in international development need skilled contractors to help achieve their missions. This comes down to quality people who ensure contract compliance, value efficiency and results, and can figure out contextual problems in real time under dynamic conditions. Development entrepreneurs – often experienced experts who come together from development, diplomacy, defense, and commercial fields – have the skills, knowledge, and systems to achieve impact despite their size and operational footprint.

2 Small Businesses offer new ideas and new approaches to solve your problems.

The world is fast changing. New technologies spread. Sudden shocks occur. But human problems persist: violence, resource competition, disease, and political instability that threaten the peace and security of the United States and its partners around the world. To respond to and anticipate these challenges, development places a premium on innovation and adaptation. Small businesses, which often arise out of a passion for change, inject innovation and new ways of doing things into international development.

3 Small Businesses are nimble and adaptive to changing conditions.

Development entrepreneurs demand efficient, up-to-date systems. They leverage off-the-shelf technologies and best practices to adapt quickly and create pragmatic approaches. Without the deep resources of the large companies, small businesses actively seek better, faster, and efficient solutions. They listen and learn quickly. They thrive on continuously collaborating, doing, learning, and adapting to remain responsive to the needs of customers and to promote positive change in demanding environments.

4 Small Businesses provide peer-to-peer mentoring and coaching.

Development entrepreneurs are courageous people who take a chance on themselves to make the world a better place. Starting small, they intimately understand the challenges and risks facing their ventures, but they are passionate about helping others. They are problem solvers and doers that serve as role models to organizations in developing countries. Peer learning comes naturally to small businesses based on personal experience, and they can serve as mentors and coaches to help bring out the best of local organizations and their leadership and staff.

5 Small Businesses can enhance your impact.

Small businesses work in partnership with their clients to develop new ways of achieving greater results. They internalize the successes and failures they have encountered and apply the lessons learned to enhance impact. They do not have the luxury of time or resources to not adapt and are always seeking ways to develop better interventions. As small businesses' reputations are always on the line, they work hard to satisfy customers, transforming passion into action to make a difference in the world.

KANAVA delivers development.

As a women-owned, service-disabled veteran-owned small business, KANAVA brings extensive experience in defense, diplomacy, and development. Together, our leadership team works to apply the very best in industry practices to solving the world's most pressing challenges.

Email us at info@kanavainternational.com.

Opinion: Development professionals, here's how to shatter the glass box

By Indira Ahluwalia // 15 November 2018

KAUR Strategies, LLC
Building from your core to follow your path

Photo by: rawpixel on Unsplash

The term "glass ceiling" conjures images of an invisible and seemingly impenetrable barrier that keeps women from advancing above a certain hierarchy. An employee with many gradients of differences — gender plus sexual orientation, race, religion, ethnicity or disability — faces even greater constraints for both vertical and lateral shifts.

The field of international development is particularly susceptible to the glass box paradigm, even as it supports changing the lives of diverse people across nations. In order to create solutions for the complex problems confronting development, both the employer and employee bear responsibilities for breaking the glass boundaries that limit achievement.

Development organizations build armies of experts, typically with women and people of color filling the back offices and scarce diversity at the top. Often, young Caucasian program staff manage older more experienced local managers and subconsciously determine capacity more by accent than merit.

To build stronger synergies for more effective problem solving, we need to go from building local systems to monitor compliance to exercising participatory decision-making within our teams.

While we focus on hiring experts with language and cultural fluency to implement programs, we need to employ and promote diverse people to design and decide outcomes and not just support programs in the home offices. To build a true partnership in development, we need to lift the glass box.

Here's what employers can do to truly provide access and opportunities for diverse staff to fully contribute to an organization's full potential:

1. Recognize bias

Decision-makers establish order both with intention — policy — and subconsciously — bias — to maintain control. When preconceived notions are not checked but instead used to form judgments, and then decisions, the resultant policies are flawed. Developing policies that are in keeping with the context rather than habit requires decision-makers to step out of their comfort zones and build shared power.

Decision-makers need to realize that releasing their hold on the controls is not the same as giving up authority. In addition, unconscious bias perpetuates stereotypes that challenge the progress of people that look, sound, or talk differently than the majority. Recognizing the biases we carry gives us the abili-

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ty to make decisions based on need and merit for better solutions.

2. Break groupthink

Leaders are usually surrounded by like-minded people doing things the ways things have always been done. In these scenarios, a divergent view is often seen as contradictory and a conflict that needs to be managed. Building diversity of thought deliberately and without constraints on creativity, facilitates innovation for competitiveness as much as solutions to the complex problems of today.

In order to build diversity of thought, employers need to tap multiple networks beyond their usual sources, create opportunities for engagement by staff at all levels and across silos, build a safe culture that is based on mutual respect, and develop soft skills for all employees to enable them to find their voices to express their knowledge and talent.

3. Change mindsets

While many employers support the notion of diversity and inclusion, the crux of the issue is in deciding how much to push back the walls or push up the ceiling of the glass box, but not removing the box altogether. There is comfort in what is known and has been. However, today the double bottom line requires strategy and flexibility that is out of the box to address management challenges and development problems. Building equity by providing access, opportunities and advancement to staff requires changing the mindset of control and boundaries.

The conscious and intentional recognition of the need and value of ensuring true diversity of backgrounds, thought, and expertise on a platform of equality creates opportunities for more inclusive recruitment, better retention, high-quality performance and greater gains for the entity.

There are things employees can do, too:

1. Recognize the impact of bias on their own behavior

In terms of the employee, a first step to building strength is to stop walking on glass. Bias conditions both the system and individuals in the system impacted by prejudices. Individuals facing prejudice need to stop allowing a biased system to act as the mirror for their own self-worth or capabilities.

2. Build confidence

Building a sense of self with acceptance of all the facets of diversity that creates the whole person is a prerequisite for self-assurance. With this conscious awareness and acceptance of the self, intention can be better formulated, and ambition created to fuel proactive and productive behavior in the workplace.

3. Negotiate and take responsibility

With knowledge of one's own full potential comes the power to negotiate access, advancement, and remuneration. So instead of tentatively walking on glass, dance on glass. And when the box crumbles around you, as it will, step out of the box, and bring others along.

Ultimately, morale, performance, and profitability depend on both employers and employees utilizing diversity as a key variable in the success of their organization and their own growth.

How can we bridge the gap between commitment and action to advance women's leadership in development? #GlobalDevWomen Leadership Weeks explores tips for professionals and organizations on how to reach gender parity through advice articles, op-eds from industry leaders, online events, and a virtual career fair for mid-senior level women professionals.
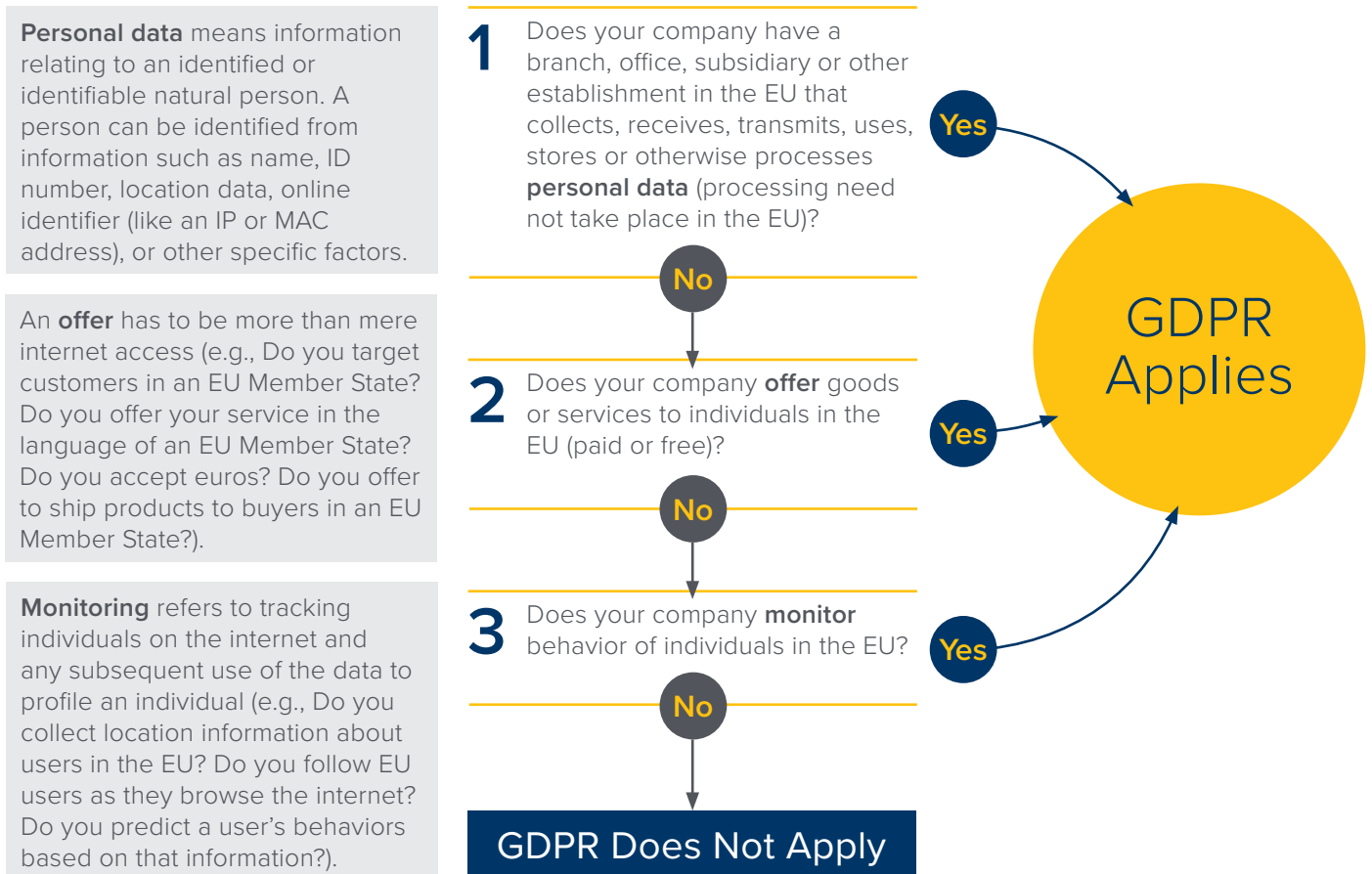
Does the GDPR Apply to You?

The EU's General Data Protection Regulation became effective on May 25, 2018, replacing the EU Data Protection Directive. The GDPR can apply to US-based businesses even if they do not have offices or employees in the EU. It can also reach activities conducted outside the EU.

The Directive did not regulate US businesses unless the collection or processing occurred within the EU (e.g., if a US-based company had a data center in the EU). Now the GDPR clearly has stronger extraterritorial reach than its predecessor.

Businesses collecting and using personal data should know their GDPR obligations. Violators of the GDPR face steep penalties. Regulators can fine a company up to 20 million euros or 4% of worldwide annual turnover, whichever is higher.

Follow our three-question flowchart to see if GDPR applies to your company.

Personal data means information relating to an identified or identifiable natural person. A person can be identified from information such as name, ID number, location data, online identifier (like an IP or MAC address), or other specific factors.

An **offer** has to be more than mere internet access (e.g., Do you target customers in an EU Member State? Do you offer your service in the language of an EU Member State? Do you accept euros? Do you offer to ship products to buyers in an EU Member State?).

Monitoring refers to tracking individuals on the internet and any subsequent use of the data to profile an individual (e.g., Do you collect location information about users in the EU? Do you follow EU users as they browse the internet? Do you predict a user's behaviors based on that information?).

1 Does your company have a branch, office, subsidiary or other establishment in the EU that collects, receives, transmits, uses, stores or otherwise processes **personal data** (processing need not take place in the EU)?

Yes → No

2 Does your company **offer** goods or services to individuals in the EU (paid or free)?

Yes → No

3 Does your company **monitor** behavior of individuals in the EU?

Yes → No

GDPR Applies

GDPR Does Not Apply

Enforcing the GDPR Against US Companies

At this point, it is no secret that many US companies will be subject to the GDPR. Under the GDPR, EU regulators will have the authority to punish noncompliance by imposing hefty fines, issuing injunctions, assessing bans on processing, and suspending international data transfers.

The practical impact of such enforcement measures is the ability to devastate a product, service, or business.

Many US companies may still be wondering:

How can regulators enforce the GDPR against companies in the United States?

The answer, at this point, depends on principles of jurisdiction and international law. In general, international law distinguishes between the ability to apply law versus enforce law extraterritorially. As such, even if the GDPR is applicable to certain conduct of US companies, enforcement of penalties for violating the law may or may not reach beyond EU member states.

US company with physical establishment in the EU	**The GDPR can be enforced directly by EU regulators.**
US companies subject to the GDPR without physical presence in the EU	**A local representative must be appointed unless an exemption applies.** This EU representative may be held liable for non-compliance of overseas entities, although the contract with the representative may shift liability back to the US company.
US companies without physical presence in EU and without local representative	**EU regulators will have to rely on US cooperation or international law to enforce GDPR noncompliance.**

- While a US-EU civil enforcement mechanism for the GDPR doesn't yet exist, a cooperation agreement is possible in the future.

- Without such an agreement, through the doctrine of comity, US courts will grant extraterritorial effect to the valid judgments of foreign courts. However, the US court must first be satisfied that the foreign court properly had jurisdiction over the matter and that the judgment was not contrary to public policy.

- Only time will tell whether the GDPR satisfies these requirements.

This analysis relates to enforcement for GDPR noncompliance in general. However, some violations of the GDPR may also be violations of the EU-US Privacy Shield Framework for the transfer of personal information from the EU to the US. In those instances, the FTC has indicated that it will enforce the Privacy Shield against US companies.

Top 5 Takeaways on the GDPR

We live in a new world of EU privacy rules shaking US businesses. As of 10 months ago, many of you had not heard about the GDPR when we explained how the GDPR applies to US companies. By now your company may be on its way to GDPR compliance (but beware: see #3 below).

For those of us who have been immersed in GDPR compliance projects over the last year, it was refreshing to hear so many of our colleagues, family members and news outlets around the world pay attention to the GDPR on May 25th. But we also heard a lot of misunderstandings about the GDPR. **Here are our five takeaways from the past year:**

1   **Do NOT rely on consent for all data collection.** Despite what almost every news story stated the week of May 25, consent is not required in all instances. Consent is one of many ways to lawfully collect personal data. In fact, we only recommend that companies obtain consent when another ground is not available.

2   **If you do rely on consent, be careful.** Almost every proposed consent mechanism we reviewed did not meet GDPR-level consent. For example, most consent mechanisms did not require an affirmative action or did not disclose that consent can be withdrawn at any time.

3   **Do not call yourself 100% or completely GDPR compliant.** Many companies claim to be "100% GDPR compliant" in their privacy notices. We caution against such a claim because no one truly knows what a 100% compliant company looks like. There are still too many questions unanswered and the law has not been tested (see #4 below).

4   **Data Processing Addendums or "DPAs" (i.e., controller to processor agreements) are taking many forms.** Of the DPAs we reviewed from both controllers and processors, about 50% of them stuck very close to the Article 28 required provisions. About 25% took a more aggressive approach, adding an indemnity by the other party for breach of the DPA (some were silent on the limitation of liability or expressly stated that the indemnity is not capped by the limitation of liability provisions in the underlying agreement). Other DPAs were more expansive, shifting the liability allocation of the underlying agreement on claims outside of the GDPR and adding obligation much more robust than those of Article 28.

5   **Companies have varied approaches in their privacy policies.** We have seen a wide range of privacy policies. Some cover the exact disclosure requirements of Articles 13 and 14, while others (even those of very large data-focused players) are taking a more risk-based approach and do not provide the granularity required under the GDPR. Some companies apply GDPR-based benefits to all consumers, and others limit them to individuals in the EU and EEA.

We promised 5 takeaways. But we will add one as a bread crumb for future GDPR topics post-May 25th.

6   **There are many, many unanswered questions.**

What exactly does a controller-to-controller "arrangement" need to cover? Can a data protection officer be "accessible" and located outside of the EU? When analyzing the mandatory DPO requirement, what does "large scale" mean? When and how can you rely on consent for the transfer of data outside of the EU/EEA? How granular do we need to be in setting forth our legal bases for data use? Who is serving as a local representative?

Cameron Hunt, Client Service Director
t: +1 703.394.2234
e: cameron.hunt@wbd-us.com