

# Kevane Grant Thornton Mailbag



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**Kevane Grant Thornton LLP**

33 Bolivia Street  
Suite 400  
San Juan, PR 00917-2013

**T** + 1 787 754 1915

**F** + 1 787 751 1284

**E** [kgt@pr.gt.com](mailto:kgt@pr.gt.com)

[linkedin.com/company/kevine-grant-thornton](https://www.linkedin.com/company/kevine-grant-thornton)  
[facebook.com/kevinegrantthornton](https://www.facebook.com/kevinegrantthornton)

## 31 August 2017 | Issue 77

### Dear clients and friends:

The Kevane Grant Thornton Mailbag is your link to all our communications related to the operations of businesses in Puerto Rico. Our purpose is to offer you with up-to-date information concerning audit, tax, advisory and accounting matters that might have an impact on individuals or in the way you conduct your business in Puerto Rico.

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# Audit Alert: Proposal to address grant and contribution accounting by NFPs

August 10, 2017



**Aida Ramirez**

Partner Head of Audit  
Kevane Grant Thornton  
T (1) 787 754 1915  
E [aida.ramirez@pr.gt.com](mailto:aida.ramirez@pr.gt.com)

The FASB has issued a proposed ASU, [Clarifying the Scope and the Accounting Guidance for Contributions Received and Contributions Made](#), to assist entities in evaluating whether transactions should be accounted for as contributions (nonreciprocal transactions) within the scope of ASC 958, *Not-for-Profit Entities*, or as exchange (reciprocal) transactions subject to other guidance, such as ASC 606, *Revenue from Contracts with Customers*. The proposal would also address how an entity would distinguish between conditional contributions and unconditional contributions when a transaction is accounted for as a contribution.

The proposed amendments would apply to both contributions received by a recipient and to contributions made by a resource provider, such as a government agency, a private foundation, or a corporation. While the accounting for contributions is an issue primarily affecting not-for-profit (NFP) entities, the proposed amendments would apply to all entities that receive or make contributions of cash or other assets.

In the past, stakeholders have reported difficulties in characterizing grants and similar contracts with government agencies and others as either exchanges or contributions, and in determining whether grants and similar contracts that are characterized as contributions are either conditional or unconditional, which has resulted in diversity in practice among NFPs.

As a result, the amendments in the proposal would provide a more robust framework for entities to apply in determining whether a particular transaction is an exchange transaction

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## Call to action

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or a contribution transaction, by clarifying how to evaluate whether a resource provider is receiving commensurate value in an exchange transaction.

The amendments in the proposal would also assist entities in determining whether a transaction that should be accounted for as a contribution is either a conditional contribution or an unconditional contribution, by providing a basis under which an entity would determine whether an agreement includes a barrier. If an agreement includes both a barrier and a right of return (or a right of release), the contribution would be deemed conditional, and contribution revenue would not be recognized by the recipient until the condition is met. The proposal also includes indicators that an entity would consider when it determines whether an agreement includes a barrier. When an entity concludes that a contribution is unconditional, it would then consider whether the contribution is restricted by applying the existing related guidance.

The effective dates would be the same as those for the new revenue guidance in ASC 606, as follows:

- *for public entities (public business entities and certain NFPs):* Annual periods, including interim periods therein, beginning after December 15, 2017
- *for all other entities:* Annual periods beginning after December 15, 2018 and interim periods in annual periods beginning after December 15, 2019

Early adoption would be permitted irrespective of whether ASC 606 is early adopted. An entity would be permitted to apply the forthcoming guidance using a retrospective approach or a modified prospective approach. Under the modified prospective approach, revenue or expense not yet recognized prior to the year of adoption (because the agreement either was not completed as of the effective date or was entered into after the effective date) would be recognized in the year of adoption in accordance with the forthcoming guidance. Under this approach, no prior-period results would be restated, and an entity would not make a cumulative-effect adjustment to opening net assets or retained earnings. If an entity chooses this approach, it would also be required to make certain disclosures related to the reasons for, and the quantitative impact of, this change in accounting principle.

The Board has also released a *FASB In Focus*, which discusses the proposal in greater detail.

The comment period on the proposed ASU ends on November 1.

Source: Grant Thornton, *On the Horizon*, August 10, 2017.

We are committed to keep you updated of all developments that may affect the way you do business in Puerto Rico. Please contact us for further assistance in relation to this or any other matter



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Tax



Records



Taxpayer

# Tax Alert: Internal Revenue Circular Letter No. 17-12

August 15, 2017

On August 3, the Puerto Rico Treasury Department (the “PRTD”) issued Internal Revenue Circular Letter No. 17-12 (“CL 17-12”) to establish an alternative and expedient option to taxpayers under Correspondence Audits.

## What are Correspondence Audits?

Pursuant to Section 6051.02 of the 2011 Internal Revenue Code for a New Puerto Rico, as amended (the “Code”), in determining the correctness of any tax return or statement, the Secretary of the Treasury (the “Secretary”) is authorized to examine all documents that he or she deems pertinent for that purpose. It is in the exercise of this prerogative that the PRTD can send a particular taxpayer a Request for Information (“RFI”) in those cases where there are potential adjustments to a tax deficiency related to what was declared in a tax return or statement. These are known as **Correspondence Audits**.

Given the considerable back and forth between the taxpayer and the PRTD, these Correspondence Audits tend to be cumbersome and time-consuming for both parties involved.

Eager to expedite the process for everyone involved, through the enactment of CL 17-12, Treasury has established an alternate method whereby, instead of recurring to the ordinary Correspondence Audit, the taxpayer enters into a settlement agreement (“Acuerdo y Compromiso”) with the PRTD and pays the potential tax deficiency adjustment with a discount.

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### How will this Settlement Agreement under CL 17-12 work?

The PRTD will send a RFI to particular taxpayers in those cases where it estimates that a potential tax deficiency adjustment will take place with regards to Individual Income Tax Return' Industry o Business Income (i.e. Schedules K, L, M & N).

Along with the RFI, the PRTD will include the Settlement Agreement which will lay out the following two (2) options for the taxpayer to benefit from:

1. **payment in full** of the potential tax deficiency adjustment, with a twenty-five percent (25%) discount, plus applicable interests but without any surcharges.
2. enter into **payment plan** of the potential tax deficiency adjustment under the Taxpayer Rehabilitation Program prescribed on Circular Letter No. 17-05, with a twenty-five percent (25%) discount, plus applicable interests **and** surcharges.

The taxpayer will have a thirty (30) day window, from the date of the RFI, to choose either of the above and send the duly completed and signed Settlement Agreement. Once the PRTD receives it, the auditor in charge will issue the taxpayer a summary of the investigation (Form SC 3114), which will then be filed by the taxpayer, along with the elected payment plan.

If the taxpayer does not agree with the above referenced plans, an ordinary Correspondence Audit will take place and the taxpayer will have the aforesaid 30-day period, from the date of the RFI, to procure and submit:

1. procure and submit copies of commercial invoices and evidence of payment requested on the RFI that validate the amounts that were declared on the Individual's Income Tax Return that is currently being subject to the audit procedure;
2. download and complete the EXCEL spreadsheet that is part of CL 17-12. Both invoices and payments must properly identify the corresponding operational expense that was claimed in the Income Tax Return.
3. send the requested the documents, along with the EXCEL spreadsheet, in PDF format to the following email address: [porpuertorico@hacienda.pr.gov](mailto:porpuertorico@hacienda.pr.gov)

In addition, the taxpayer will not be able to benefit from the ten percent (10%) abatement of penalties that Circular Letter No. 17-05 affords and will be liable for a 10% penalty on unpaid amount attributable to estimated payments under Sections 1061.20, 1061.21 and 6041.09.

If the taxpayer does not comply with the RFI within the 30-day period, the PRTD will proceed to notify a tax deficiency pursuant to Section 6010.02 of the Code.

Please contact our Tax Department should additional information is required regarding this or any other tax issue. We will be glad to assist you.



**María de los Angeles Rivera**  
Partner Head of Tax and  
IBC Director  
Kevane Grant Thornton  
E [maria.rivera@pr.gt.com](mailto:maria.rivera@pr.gt.com)



**Lina Morales**  
Tax Partner  
Kevane Grant Thornton  
E [lina.morales@pr.gt.com](mailto:lina.morales@pr.gt.com)



**Francisco Luis**  
Tax Partner  
Kevane Grant Thornton  
E [francisco.luis@pr.gt.com](mailto:francisco.luis@pr.gt.com)



**Isabel Hernández**  
Tax Partner  
Kevane Grant Thornton  
E [isabel.hernandez@pr.gt.com](mailto:isabel.hernandez@pr.gt.com)



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# Advisory Alert: Puerto Rico, trends and challenges to small business federal contracting.

August 17, 2017

According to the United States Census Bureau, over 99% (about 44,000) of the businesses in Puerto Rico are small. Under the Small Business Act, the Small Business Administration plays an important role in ensuring that small businesses gain access to federal contracting opportunities. The SBA administers several programs in Puerto Rico including the 8(a) Business Development (8(a)), Historically Underutilized Business Zone (HUBZone), Women-Owned Small Business (WOSB), and Service-Disabled Veteran-Owned Small Business (SDVOSB) programs.

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## Ojel Rodriguez

Partner Head of Advisory  
Kevane Grant Thornton  
T (1) 787 754 1915  
E [ojel.rodriguez@pr.gt.com](mailto:ojel.rodriguez@pr.gt.com)

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Through one or more of the four SBA socioeconomic programs or other designations, small businesses can receive federal prime contracts based on full and open competition and through set-asides and sole source awards.

A new report issued by the United States Government Accountability Office (GAO) examined trends in small business contracting and the use of SBA programs in Puerto Rico from fiscal years (FY) 2006 through 2016. In addition, GAO interviewed stakeholders such as federal agency contracting officials, industry associations in Puerto Rico, and economic development entities to obtain their views on any challenges small businesses in Puerto Rico face in obtaining federal contracting opportunities. The report also included the steps SBA and other agencies have taken to assist Puerto Rico small businesses in obtaining federal contracting opportunities. However, GAO did not assess the extent to which steps SBA and other agencies have taken address the challenges stakeholders identified nor it made recommendations in the report.

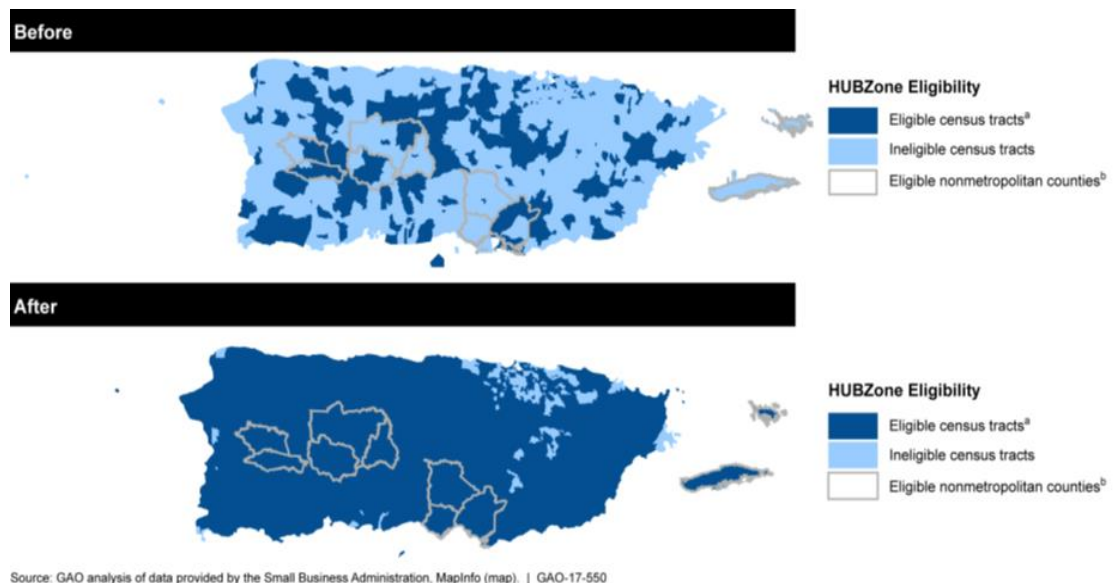
## Background

In June 2016, US Congress enacted the Puerto Rico Oversight, Management, and Economic Stability Act, commonly known as PROMESA to address Puerto Rico's debt crisis and fiscal condition. PROMESA includes a provision for GAO to evaluate the application and utilization of SBA programs in Puerto Rico (including contracting activities relating to HUBZone small business concerns) and identify any provision of federal law that may create an obstacle to the efficient implementation of such programs.

In June 2016 also, the SBA announced that it had revised the definition of "qualified census tracts" eligible to be designated as HUBZones to provide additional opportunities in federal contracting for small businesses in Puerto Rico. By removing the previous limitations, the SBA expanded the number of eligible census tracts in Puerto Rico from 260 to 776 making nearly all of Puerto Rico qualify as a HUBZone (Figure 1).

As a result of the new eligible census tracts, a total of 30 businesses submitted applications to the HUBZone program between June 2016 and March 2017; 16 of the 30 businesses had primary locations in newly designated HUBZone-qualified census tracts.

Figure 1: HUBZone areas in Puerto Rico before and after the SBA changed the definition of qualified census tracts in June 2016



According to the report, as of March 2017, Puerto Rico had 76 8(a) certified businesses, 40 HUBZone certified businesses, 256 WOSBs, and 56 SDVOBs.

## Trends in federal contracting

The US Congress has set an annual government-wide goal of awarding not less than 23% of prime contract dollars to small businesses. These contract dollars are awarded to small businesses qualified in any of the SBA four programs. Under these programs, federal agencies can make sole source awards for contracts valued up to \$4 million. Federal agencies are also required to reserve contracts with values exceeding \$3,000 but less than \$150,000 for small businesses exclusively.

In order to identify the trends in the use of SBA programs, GAO analyzed data on prime contract obligations amounts for Puerto Rico from fiscal years 2006 through 2016. However, the data for prime contracts states that the place of performance is in Puerto Rico. This means that prime contract data for Puerto Rico may include obligations awarded to

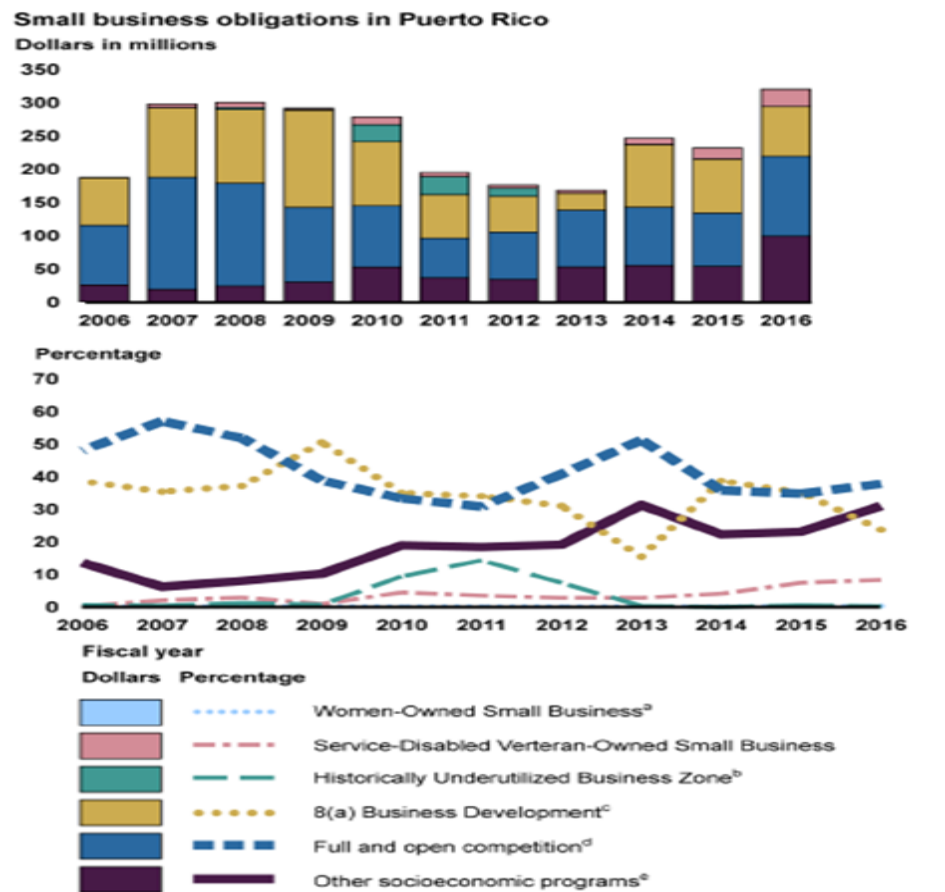


businesses that are subsidiaries of companies headquartered outside of Puerto Rico and not necessarily local small businesses.

Below is a summary of the trends GAO identified in federal contracting obligations to small businesses in Puerto Rico:

- the total percentage of federal prime contracting awarded to small businesses located in Puerto Rico ranged from about 24% in FY2006 to about 51% in FY2015. In FY2016, small businesses in Puerto Rico received 47% (approximately \$319 million) of federal prime contracting obligations
- although some obligations were awarded to businesses located elsewhere, such as on the US mainland, over 70% went to small businesses located in Puerto Rico for 7 of the 11 fiscal years that were reviewed; in FY2016, this figure was 81%
- a higher percentage of federal prime contracting obligations were awarded through the 8(a) program than through HUBZone, WOSB, or SDVOSB programs combined. Federal agency contracting officers consider the 8(a) program's certifications process to be rigorous and believe in the competence of 8(a) businesses (Figure 2)

Figure 2: Small business obligations for Puerto Rico-based contracts and businesses



Source: GAO analysis of data from Federal Procurement Data System-Next Generation. | GAO-17-550

- During FY2016, 67% or about \$215 million of federal prime contracting obligations were concentrated in the manufacturing sector followed by the construction sector (about \$69 million or 22%), and the professional and business service sector (about \$23 million or 7%)

- The Department of Defense (DOD), Department of Veterans Affairs (VA), and the General Services Administration (GSA) awarded the greatest percentages of federal prime contracting to small businesses in Puerto Rico. In FY2016, the DOD

### Stakeholder views

In addition to the examination of trends in federal contracting, the GAO spoke with various stakeholders to obtain their views on the challenges that small businesses in Puerto Rico are currently facing with regards to obtaining federal contracting opportunities.

According to GAO, many of the challenges that stakeholders identified were similar to those expressed in the 2012 report by the same office, *Government Contracting: Federal Efforts to Assist Small Minority Owned Businesses*, which explored challenges faced by small businesses nationwide, including minority-owned businesses, in seeking federal contracting opportunities.

The challenges expressed by stakeholders in Puerto Rico included the increased use of contract bundling or consolidation, difficulty in meeting contract procurement requirements, and lack of knowledge about the federal procurement process.

The challenges were organized in 9 categories:

Challenge	Description
Increased used of contract bundling or consolidation	A trend in federal contracting toward contract consolidation or bundling has led to a decrease in the number of small businesses competing for federal contracts across the US. Smaller businesses are less likely to have the capacity or experience to compete or qualify for the large scope of work associated with consolidated contracts. For an island like Puerto Rico, small businesses are generally smaller.
Difficulty meeting procurement requirements	Procurement for federal contracts, such as performance history for construction contracts, posed challenges for small businesses in Puerto Rico mainly due to limited construction opportunities on the island. In addition, the experience of construction businesses in Puerto Rico does not match the procurement requirements, which are often standardized to mainland building standards and do not consider the unique conditions in Puerto Rico. As a result, agencies' contracting officers may not consider Puerto Rican businesses' experience as qualifying.

Challenges	Description
Lack of access to bonding, financing, and capital for construction projects	Federal construction contracts often require bonding. Small businesses in Puerto Rico are often unable to meet bonding requirements. A lack of access to capital, banks' unwillingness to extend credit to small businesses and the inability to meet financial standards required by surety companies due to Puerto Rico's economic downturn are among the disqualifying factors.
Lack of knowledge of the federal contracting process	Some small businesses in Puerto Rico may not know how to complete a proposal for federal contracting and may not have the infrastructure in place to prepare contracts accurately. In addition, many small businesses do not have a process in place to meet the proposal guidelines; others are unfamiliar with federal contracting opportunities and where to find them.
Lack of knowledge of SBA's small business contracting programs	Small businesses may not know where to obtain information about SBA's programs and how to complete the paperwork to become certified in these programs. Stakeholders expressed that businesses in Puerto Rico need more training and better education about the programs' benefits and requirements. In addition, limitations in SBA's online system used to help small businesses identify whether they are located in a HUBZone area may also pose a challenge. Due to the unique formatting of addresses in Puerto Rico, SBA's system is unable to process certain addresses.
Lack of access to agency contracting officials	Geographic barriers may be a challenge because it is difficult for businesses to market and maintain their relationships with contracting officers, who are generally located at the headquarters level on the mainland. Contracting officers from agencies that do not have a presence in Puerto Rico and award contracts to businesses that are local to these agencies rather than to businesses in Puerto Rico.

Challenge	Description
Communication barriers	The language barrier may prevent small businesses to develop relationships with the contracting agency or may be a barrier in the proposal development process. Often, documents need to be translated from Spanish, which can be onerous and costly. Small businesses often do not have the resources or the ability to perform these translations. SBA's Puerto Rico office accepts documents in Spanish if the office has a Spanish-speaking staff member. If no Spanish-speaking member is available, the documents must be translated in order for SBA to review them.
Lack of a Procurement Center Representative (PCR)	SBA PCRs work with federal agencies and small business to identify contracting opportunities for small businesses. The lack of an SBA PCR in Puerto Rico acts as a disadvantage.
Award of contracts to businesses located outside of Puerto Rico	Lack of access to contracting officers and difficulty meeting procurement requirements have led to concerns about contracts being awarded to businesses located outside of Puerto Rico for work to be performed in Puerto Rico.

Despite the challenges and concerns expressed by various stakeholders, none of the stakeholders that were interviewed identified federal laws that have created unique challenges for small businesses in Puerto Rico in obtaining federal contracting.

Nevertheless, SBA officials are taking steps to address these challenges. Efforts such as trainings on contracting programs, one-on-one appointments to help businesses navigate the federal contracting process, and outreach programs have been made. According to SBA officials in Puerto Rico, a total of 61 training events with 424 attendees were held during 2016. On April 24, 2017, SBA announced that it had approved the first Puerto Rican surety company to participate in its Surety Bond Guarantee Program. The limitations in SBA's online system are also being addressed. SBA officials stated that they are in the process of transitioning to a new mapping system that should provide more accurate information. It is estimated that the new system will be available in late 2017.

You can download the report here [HYPERLINK].

<https://juntasupervision.pr.gov/wp-content/uploads/wpfd/50/596636f6e83bd.pdf>

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# Outsourcing Alert: New guidelines equal pay in the workplace

August 18, 2017

On August 10, 2017, the Puerto Rico Secretary of Labor and Human Resources issued the “Uniform Guidelines for Equal Pay in the Workplace” pursuant to the mandate of Act No. 16 of 2017, enacted on March 8, 2017, creating the Puerto Rico’s Equal Pay Act and Act No. 61 of 2017 which requires that certain government contractors are in compliance with the Equal Pay Act.



**Julio Villegas**  
Audit Partner and  
Head of Outsourcing  
Kevane Grant Thornton  
T (1) 787 754 1915  
E julio.villegas@pr.gt.com

The act prohibits pay discrimination based on sex against employees who perform work that requires equal skill, effort, and responsibility under similar work conditions unless the difference in pay is based on:

- bona fide system that rewards seniority or merit
- compensation system based on quantity or quality of production, sales or profits
- education, training, or experience, factors are reasonably related to the work in question
- any other reasonable factor not related with the gender

The act proscribes as illegal practice the following:

- asking an applicant, or his her current or past employer, about the applicant’s salary history, unless the applicant voluntarily provides such information.  
prohibiting an employee or applicant from asking, discussing, soliciting, or divulging information
- prohibiting an employee or applicant from asking, discussing, soliciting, or divulging information about his or her salary or the salary of another employee who performs a comparable job

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These guidelines provide suggestions of what an employer can do in matter of recruitment, bonuses, classification plan and other employee manual procedures in accordance with the requirements of Act 16 and Act 61 and recommend that employers should review and update their employee manuals and internal procedures to incorporate changes established by new legislation

The guidelines will be effective from the date of their approval.

For more information, visit:

<http://www.trabajo.pr.gov/pdf/Guias%20Uniformes%20Autoestudio%20Igualdad%20Salari al.pdf>

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