

PilieroMazza Weekly Update for Government Contractors and Commercial Businesses

March 27, 2020

If you have questions concerning the content below, please visit this [link](#).

COVID-19 CLIENT RESOURCE CENTER: To access resources for businesses navigating the COVID-19 crisis, we invite you to visit PilieroMazza's "[COVID-19 Client Resource Center](#)."

CLIENT ALERT: The CARES Act and Leave Guide for Employers: Deciding Which Option is Best for You and Your Employees, March 27, 2020, [Nichole Atallah](#), [Sarah Nash](#), and [Sara Nasser](#). [[Read More](#)]

WEBINAR: Teleworking in a COVID-19 Environment: Your Questions Answered, March 31, 2020, [Nichole Atallah](#). [[Read More](#)]

WEBINAR: COVID-19 Survival: The \$2 Trillion CARES Act and Your Business, April 1, 2020, [Cy Alba](#), [Nichole Atallah](#), and [Dave Shafer](#). [[Read More](#)]

WEBINAR: The False Claims Act: 2019 Takeaways and 2020 Trends, April 2, 2020, [Matt Feinberg](#) and [Jackie Unger](#). [[Read More](#)]

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

SBA Makes Loan Deferments Automatic Through December

The Small Business Administration's (SBA) Administrator, Jovita Carranza, announced that deferments on SBA loans will be automatic through December 31, 2020. Borrowers of home and business disaster loans now do not have to contact SBA to request deferment. These changes should help borrowers who are still paying back SBA loans from previous disasters. Read more [here](#).

Law Passed Providing \$8.3 Billion in Emergency Funding and Small Business Loans

Congress passed, and President Trump signed into law, H.R. 6074, the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, which provides \$8.3 billion in emergency funding for federal agencies to respond to the coronavirus outbreak. Division A of the bill provides Fiscal Year 2020 supplemental appropriations for the Department of Health and Human Services, the State Department, and SBA to respond to the coronavirus outbreak.

The supplemental appropriations are intended to address issues such as:

- developing, manufacturing, and procuring vaccines and other medical supplies;
- grants for state, local, and tribal public health agencies and organizations; and
- loans for affected small businesses.

A Congressional Budget Office discretionary spending estimate for Division A can be found [here](#). It breaks down estimated discretionary spending changes by agency. The full text of the law can be found [here](#).

Economic Injury Disaster Loan Program Updates

CLIENT ALERT: Breaking Down SBA's COVID-19 Economic Injury Disaster Loan, March 20, 2020, [Dave Shafer](#)

The unprecedented impact of the COVID-19 pandemic on small businesses has caused SBA to institute an Economic Injury Disaster Loan (EIDL) program aimed at aiding those affected by the pandemic. ***Whether you're a government contractor or a commercial business, we're breaking down the who, what, where, when, and how of the SBA's detailed EIDL application process.*** [[Read More](#)]

SBA Revises Criteria for States Seeking COVID-19 Economic Injury Declaration

SBA Administrator Jovita Carranza issued revised criteria for states or territories seeking an economic injury declaration related to COVID-19.

The relaxed criteria will have two immediate outcomes:

1. a faster, easier qualification process for states seeking SBA disaster assistance and
2. expanded, statewide access to SBA disaster assistance loans for small businesses.

Read more [here](#).

7(a) Loan Program Updates

SBA Amends Business 7(a) Loan Regulations

SBA issued a final rule amending its business loan program regulations. Key amendments in this rule codify SBA's informal enforcement actions, codify new civil monetary penalties and certain appeal rights for 7(a) lenders, clarify certain enforcement actions for microloan intermediaries, and adopt statutory changes to the credit elsewhere test. The rule also makes other technical amendments, updates, and conforming changes, including clarifying oversight and enforcement related definitions. Read the published version [here](#).

SBA Seeks Comments on 7(a) Loan Information Collection

SBA issued a sixty-day notice and request for comments regarding the collection of information from participants in the 7(a) Loan Program. Section 7(a) of the Small Business Act authorizes the SBA to guaranty loans in each of the 7(a) Programs. The regulations covering these and other loan programs

at 13 C.F.R. Part 120 require certain information from loan applicants and lenders that is used to determine program eligibility and compliance.

SBA is requesting comments on:

- whether the collection of information is necessary for the agency to properly perform its functions;
- whether the burden estimates are accurate;
- whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and
- whether there are ways to enhance the quality, utility, and clarity of the information.

Comments are due May 22, 2020. Read the published version [here](#).

SBA OIG Releases Audit Report of SBA Pilot Program to Increase Access to 7(a) Loan Guaranties

The SBA Office of Inspector General conducted an audit of SBA's Community Advantage (CA) pilot program. The pilot provides access to 7(a) loan guaranties as high as 85 percent for loans up to \$150,000 and 75 percent for loans over \$150,000, up to \$250,000. The audit sought to determine if SBA's CA pilot program expanded capital to benefit small businesses in underserved markets and if SBA established internal controls to mitigate the risk of loss for fiscal years 2011 through 2018. Auditors interviewed SBA officials; reviewed applicable regulations, policies, procedures, and guidance; and analyzed CA and 7(a) loan data. Read the full audit report [here](#).

CRS Report Update: SBA 7(a) Loan Guarantee Program.

The Congressional Research Service (CRS) released an updated report on SBA's 7(a) Loan Guaranty Program. The report discusses the rationale provided for the 7(a) program; the program's borrower and lender eligibility standards and program requirements; and program statistics. It also surveys congressional and presidential actions taken to enhance small businesses' access to capital. Lastly, the report briefly discusses bills and proposals to expand the 7(a) program to assist small businesses adversely affected by COVID-19. Read the full report [here](#).

COVID-19 Resources

- [SBA Small Business Guidance & Loan Resources](#)
- [SBA Disaster Assistance](#)
- [SBA Disaster Loan Assistance](#)
- [SBA Disaster Loan Application](#)

For additional resources on navigating the COVID-19 crisis visit PilieroMazza's "[COVID-19 Client Resource Center](#)."

GOVERNMENT CONTRACTS LAW

COVID-19 Guidance for Government Contractors

Government Executive reported that the Trump administration released coronavirus guidance for federal contractors, encouraging agencies to maximize telework and offer other work flexibilities for federal contractors. The Office of Management of Budget (OMB) sent a memo to agency and department heads after requests from many trade associations that represent federal contractors, in

order to ensure continuity of operations. This memorandum identifies steps to help ensure this safety while maintaining continued contract performance in support of agency missions, wherever possible.” Read more [here](#). The OMB memorandum is available [here](#).

Class Deviation: Justification and Approval Threshold for 8(a) Contracts

The Department of Defense (DOD) issued a class deviation whereby, effective immediately, for procurements valued at \$100 million or less, contracting officers are not required to execute a justification and obtain approval for award of a sole source contract under SBA’s 8(a) program. The class deviation remains in effect until incorporated in the DFARS or otherwise rescinded. Read more [here](#).

Class Deviation: Protection of Technical Data and Computer Software Under Small Business Innovation Research Program Contracts

The DOD issued a class deviation whereby, effective immediately, contracting officers shall use the clause provided in [Attachment 1](#), in lieu of the clause at DFARS 252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program, in new solicitations and contracts awarded under the SBIR Program, when technical data or computer software will be generated during contract performance. The class deviation remains in effect until implemented in the DFARS or otherwise rescinded. Read more [here](#).

BLOG: Raytheon Challenges CO Intellectual Property Decision in COFC, March 17, 2020, [Patrick Rothwell](#)

In a recent Court of Federal Claims (COFC) case, Raytheon Corporation (Raytheon) challenged a federal agency order that a Government Purpose Right legend be affixed to documents purportedly containing technical data. COFC held that the contracting officer’s (CO) decision that the documents contained technical data and the CO order to affix a GPR legend constituted a claim under COFC jurisdiction. ***This demonstrates that government contractors may challenge similar intellectual property disputes in COFC, despite an adverse final decision from a CO.*** [\[Read More\]](#)

Related Government Contracts Law Presentations by PilieroMazza

WEBINAR: Teleworking in a COVID-19 Environment: Your Questions Answered, March 31, 2020, [Nichole Atallah](#). [\[Read More\]](#)

WEBINAR: The False Claims Act: 2019 Takeaways and 2020 Trends, April 2, 2020, [Matt Feinberg](#) and [Jackie Unger](#). [\[Read More\]](#)

LABOR & EMPLOYMENT LAW

CLIENT ALERT: COVID-19 Emergency Sick and Family Leave: What Employers Need to Know, March 18, 2020, [Nichole Atallah](#) and [Sarah Nash](#)

The United States Senate just rubber stamped the House version of [emergency measures](#) to help employees and families in response to the COVID-19 pandemic during this National Emergency. The law includes provisions you have likely been following closely. President Trump is expected to sign the bill this evening and it is expected to go into effect on April 2. ***We’ve broken down what***

employers need to know now to prepare their business for sick and family leave in the era of COVID-19. [\[Read More\]](#)

The full text of H.R. 6201, the Families First Coronavirus Response Act, can be found [here](#). A related CRS insight is available [here](#).

Memorandum to All Contracting Agencies of the Federal Government

In a memo to all contracting agencies of the federal government, Department of Labor Office of Federal Contract Compliance Programs (OFCCP) Director Craig Leen wrote that he will grant a limited exemption and waiver from some of the requirements of the laws administered by the OFCCP. Specifically, Director Leen noted that OFCCP regulations authorize him to exempt contracts from requiring inclusion of any part of the equal opportunity clause in any specific contract (i) when he deems that special circumstances in the national interest require him to do so, (ii) when it is impracticable to act upon requests for exemptions individually, and (iii) where such waiver will contribute to convenience in the administration of the authorities enforced by OFCCP. Read the full memorandum [here](#).

COVID-19 Resources

- [DOL Coronavirus Resources](#)
- [DOL: COVID-19 or Other Public Health Emergencies and the Fair Labor Standards Act: Questions and Answers](#)
- [DOL: COVID-19 or Other Public Health Emergencies and the Family and Medical Leave Act: Questions and Answers](#)
- [OSHA Main COVID-19 Site](#)
- [OHSa Guidance on Preparing Workplaces for COVID-19](#)

For additional resources on navigating the COVID-19 crisis visit PilieroMazza's "[COVID-19 Client Resource Center](#)."

Related Labor & Employment Law Presentations by PilieroMazza

WEBINAR: Teleworking in a COVID-19 Environment: Your Questions Answered, March 31, 2020, [Nichole Atallah](#). [\[Read More\]](#)

BUSINESS & CORPORATE LAW

BLOG: COVID-19 and Material Adverse Effect Provisions in Acquisition Agreements, March 23, 2020, [Kathryn Hickey](#) and [Frank Massaro](#)

The coronavirus continues to create extensive uncertainty for individuals and businesses. For parties actively pursuing an M&A transaction, COVID-19 presents the buyer and seller with additional risks both pre- and post-closing, including impacting the valuation of the target company, increasing exposure to liabilities relating to performance and payment obligations, expanding risk of claims from employees and other personnel, among other extraordinary risks that may result in delay or, in the worst cases, termination of the transaction. Traditionally, acquisition agreements include material

adverse effect provisions that are designed to ensure all parties have a clear understanding of the target company's business as of closing with a reasonable belief that no event has occurred that would result in materially adverse changes. *In the "new normal" of COVID-19, we discuss why both buyers and sellers in an M&A transaction should closely examine the "material adverse effect" definition and related provisions in acquisition agreements to insulate themselves from future risk of losses.* [[Read More](#)]

CYBERSECURITY & DATA PRIVACY

DOD Releases New Controlled Unclassified Information Instruction

The National Defense Industrial Association (NDIA) reported on the recently released [DOD Instruction 5200.48](#), which establishes policies, responsibilities, and procedures for controlled unclassified information. Read more [here](#).

Public Comment Open for NIST SP 800-53 Security and Privacy Controls Update

The NDIA reported that the National Institute of Science and Technology (NIST) has opened for comment the final public draft of revision 5 of the "[Special Publication 800-53 Security and Privacy Controls for Information Systems and Organizations](#)." The purpose of SP 800-53 is to provide a catalog of security and privacy controls to protect federal information systems and organizations against threats such as attacks and natural disasters. A summary of the changes from Rev. 4 to Rev. 5 is available from NIST [here](#), as there will not be a redline version indicating changes from rev.4 to rev.5. The Comment period ends May 15, 2020. Read more [here](#).

LITIGATION & DISPUTE RESOLUTION

Related Litigation & Dispute Resolution Presentations by PilieroMazza

WEBINAR: The False Claims Act: 2019 Takeaways and 2020 Trends, April 2, 2020, [Matt Feinberg](#) and [Jackie Unger](#). [[Read More](#)]

About PilieroMazza

PilieroMazza – a business law firm – serves as a strategic partner to government contractors and commercial businesses from across the United States in numerous industries, including:

- Aerospace and Defense
- Construction
- Cybersecurity & Data Privacy
- Emerging and Developing Industries
- Environmental Remediation
- Healthcare
- Information Technology
- Manufacturers and Suppliers
- Professional Services
- Solar Energy
- Telecommunications
- Transportation

We deliver results for our clients by implementing legal and business solutions that take the client's best interests into consideration. Moreover, PilieroMazza's efficient operational structure and lean approach to staffing matters translates into competitive pricing for our clients, while providing the highest standard of client service and legal acumen.

With lawyers in Washington, DC; Boulder, CO; Annapolis, MD; and Chicago, IL, PilieroMazza is privileged to represent clients in the following areas:

- [Audits & Investigations](#)
- [Business & Corporate Law](#)
- [Cybersecurity & Data Privacy](#)
- [False Claims Act](#)
- [Government Contracts Claims and Appeals](#)
- [Government Contracts Law](#)
- [Intellectual Property & Technology Rights](#)
- [Labor & Employment Law](#)
- [Litigation & Dispute Resolution](#)
- [Mergers & Acquisitions](#)
- [Native American Law](#)
- [Private Equity and Venture Capital](#)
- [Small Business Programs & Advisory Services](#)

Visit us at www.PilieroMazza.com.

###

Disclaimer

This communication does not provide legal advice, nor does it create an attorney-client relationship with you or any other reader. If you require legal guidance in any specific situation, you should engage a qualified lawyer for that purpose. Prior results do not guarantee a similar outcome.

Attorney Advertising

It is possible that under the laws, rules, or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.

©2020 PilieroMazza PLLC
All rights reserved.