

## Pilieromazza Weekly Update for Government Contractors and Commercial Businesses

April 10, 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](#)." Please contact [covid19@pilieromazza.com](mailto:covid19@pilieromazza.com) for immediate assistance.

### **SMALL BUSINESS PROGRAMS & ADVISORY SERVICES**

#### **CARES Act Guide for Small Business Owners**

The U.S Senate Committee on Small Business and Entrepreneurship released a guide for major programs and initiatives under the Coronavirus Aid, Relief, and Economic Security (CARES) Act that will be available from the Small Business Administration (SBA) and additional tax provisions that are outside the scope of SBA. The guide can be found [here](#).

#### **COVID-19 Relief and Assistance Resources for Small Businesses**

The Congressional Research Service (CRS) released an insight on "Small Businesses and COVID-19: Relief and Assistance Resources." It presents selected websites and CRS products relevant to small businesses affected by COVID-19. The insight can be found [here](#).

#### **CRS Examines COVID-19 Stimulus Assistance to Small Businesses**

CRS released a report titled, "COVID-19 Stimulus Assistance to Small Businesses: Issues and Policy Options." The report provides a brief description of SBA's programs and discusses legislation to assist small businesses adversely affected by the COVID-19 pandemic. Read the full report [here](#).

For all CRS products related to COVID-19, see the **CRS COVID-19 Resources** page [here](#).

#### **Guide to the Economic Injury Disaster Loan Program**

The U.S. Chamber of Commerce created a guide to SBA's Economic Injury Disaster Loan (EIDL) program, which was expanded by the CARES Act. Generally, small businesses and private non-profit organizations are eligible for EIDLs. The Chamber created the guide to help businesses check loan eligibility, understand loan parameters, and find out how to access \$10,000 emergency grants. Read more [here](#).

### **SBA Opens Express Bridge Loan Program to Small Businesses Impacted by COVID-19**

SBA announced changes to the Express Bridge Loan Pilot Program (Express Bridge Pilot). A notice from SBA expanded program eligibility to include small businesses nationwide adversely impacted under the COVID-19 Emergency Declaration issued on March 13, 2020. Further, SBA revised requirements to allow Express Bridge Pilot loans made under the COVID-19 Emergency Declaration to be approved through March 13, 2021. Finally, SBA extended the term of the Express Bridge Pilot from September 30, 2020, to March 13, 2021. The extension will assist small businesses that may experience delayed effects resulting from the COVID-19 emergency, permit those small businesses to benefit from the Express Bridge Pilot, and allow SBA to continue to evaluate the program. Read more [here](#).

### **Paycheck Protection Program**

#### **SBA Launches Paycheck Protection Program**

SBA Administrator Jovita Carranza launched the Paycheck Protection Program, a \$349 billion emergency loan program created by the CARES Act. The program provides forgivable loans up to \$10 million to small businesses left financially distressed by COVID-19. The loans, which will be administered at the local level by a national network of banks and credit unions, are designed to maintain the viability of millions of small businesses struggling to meet payroll and day-to-day operating expenses. A list of approved SBA lenders is available [here](#). Read more [here](#).

#### **Guide for Obtaining Small Business Loans Under Paycheck Protection Program**

The Washington Post released an article with details on how small-business owners can access the new federal Paycheck Protection Program. The article will continue to be updated as new information is made available. Read more [here](#).

#### **Interim Final Rule on Paycheck Protection Program Loan Implementation**

An interim final rule from SBA was published with guidance on SBA's implementation of the Paycheck Protection Program and related loan forgiveness. The interim final rule was published on the Department of the Treasury website in conjunction with [additional information](#) concerning the Paycheck Protection Program, including an [updated borrower application form](#). Read the interim final rule [here](#).

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

### **GOVERNMENT CONTRACTS LAW**

#### **Small Business Best Practices Package for Defense Industrial Base**

Several mission-essential businesses have encountered conflicts with local authorities enforcing COVID-19 travel restrictions. The Department of Defense (DOD) has issued a "Best Practices Package," which includes a safe passage memo template for small businesses to adapt for local use. The memo template outlines the mission-essential nature of business-related movements. Also included in the package is the March 20, 2020, DOD memorandum titled, "Defense Industrial Base

Essential Critical Workforce Infrastructure,” as well as other helpful policy memos. Access the full best practices package [here](#).

### **DOD Establishes COVID-19 Joint Acquisition Task Force to Meet U.S. Medical Equipment Needs**

DOD established a joint acquisition task force (JATF) to deal with requests for medical and personal protective equipment from the Federal Emergency Management Agency as well as the Departments of Health and Human Services, Homeland Security, and others. Read more [here](#).

### **Additional JATF Resources**

- JATF launched an [industry portal](#), the AFWERX portal, for companies to submit proposals to meet the urgent need for medical resources.
- A JATF fact sheet from the National Defense Industrial Association is available [here](#).

### **HUBZone Program Flexibility During COVID-19 Outbreak, March 31, 2020, [Jon Williams](#)**

In a webinar on March 25, 2020, officials with SBA’s HUBZone Program showed that SBA understands the unprecedented COVID-19 outbreak has created some unique challenges for HUBZone firms. Fortunately, ***SBA acted proactively to provide flexibilities to HUBZone firms that are struggling to maintain their principal office location and employees during this challenging time.*** [\[Read More\]](#)

### **DOD Memo Addressing Contractor Delays**

DOD issued a memorandum acknowledging the widespread effects of the coronavirus pandemic and noting the regulatory provisions that excuse performance delays. In particular, various Federal Acquisition Regulation (FAR) clauses provide that a contractor will not be in default because of a failure to perform the contract if the failure arises beyond the control of, and without the fault or negligence of, the contractor. These regulations also permit contractors to request equitable adjustments. The DOD memorandum notes that requests for equitable adjustment must be considered on a case-by-case basis, in consideration of the particular circumstances of each contract, impacts realized from COVID-19, applicable law, and regulations, and inclusive of any relief that may be authorized by laws enacted in response to this national emergency. The memorandum further notes that the Office of Management and Budget (OMB) and many senior procurement officials in the various military departments and other agencies issued similar guidance regarding management of contract performance impacted by COVID-19. Read the full memo [here](#).

### **DOD Class Deviation for Undefined Contract Actions During COVID-19**

DOD issued a class deviation, which was effective immediately and implements sections 13004 and 13005 of the CARES Act, concerning for undefinitized contract actions (UCA). First, the class deviation established that the requirement that obligations, after receipt of a qualifying proposal, do not exceed 75% of the not-to-exceed price before definitization, as established in Defense Federal Acquisition Regulation Supplement (DFARS) 217.7404-4(a), does not apply to UCAs related to the national emergency for COVID-19, as determined by the head of the contracting activity. Second, the class deviation permits the head of the contracting activity to waive the limitations imposed in DFARS 217.7404(a)(1)(i), 217.7404-3(a), and 217.7404-4(a) for a UCA, if the head of the contracting activity determines that the waiver is necessary due to the national emergency for COVID-19. The class

deviation also deletes “without power of redelegation” in DFARS 217.7474-3(a)(1). Read the full text [here](#). DOD issued a revision to the class deviation to address the submission of interim vouchers under classified contracts, which is available [here](#). An FAQ on implementation is available [here](#).

### **Air Force Policy Memorandum Regarding UCA Exceptions and Authority to Make Determinations of Contract Actions in Support of COVID-19**

The Department of Air Force issued a policy memorandum detailing that, in accordance with DFARS 217.7404-5(b), the head of an agency (HOA) may waive the limitations in 217.7404(a), 217.7404-2, 217.7404-3, and 217.7404-4 for undefinitized contract actions (UCA) if the HOA determines that the waiver is necessary to support (1) a contingency operation or (2) a humanitarian or peacekeeping operation. These policies were effectively immediately until incorporated into the Air Force Federal Acquisition Regulation Supplement or otherwise rescinded. Read the full text [here](#).

### **DOD Government-Wide Commercial Purchase Card Guidance for COVID-19**

DOD issued a memorandum that offers information and guidance to promote compliance with acquisition policies applicable to the DOD Government-wide Commercial Purchase Card program. Read the full text [here](#).

### **DOD Guidance for Determining and Making Commercial Item Procurements in Response to COVID-19**

DOD issued a memorandum including a class Commercial Item Determination (CID) prepared by the Defense Contract Management Agency, Commercial Item Group (DCMA CIG) because most of the supplies and services required by DOD in response to COVID-19 will be urgent commercial item procurements. The items listed in the class CID meet the requirements of the commercial item definition under FAR Part 2.101 and are determined to be commercial items. The memorandum states DCMA will update the class CID as appropriate as additional commercial items become known. The DCMA determination does not apply to products or services being procured for non-COVID-19 activities (except for future procurement(s) of the same supplies and / or services that were previously procured using this CID). Read the full text [here](#).

### **House Committee Chairs Request Extension of Public Comment Periods During Coronavirus National Emergency**

The House Armed Services Committee announced that fourteen House Committee Chairmen and Chairwomen sent a letter to OMB’s Acting Director, Russell Vought, requesting an immediate extension of public comment periods, hearings, and meetings due to the coronavirus pandemic. The Chairmen and Chairwomen asked that OMB direct agencies to extend public comment periods by at least 45 days beyond the end of the declared national emergency. The House Armed Services Committee press release can be found [here](#). The letter is available [here](#). A related article from Government Executive is available [here](#).

**Jon Williams Comments on How COVID-19 Will Change How You Conduct Business**, March 30, 2020  
In a March 27, 2020 blog, “How Will COVID-19 Change How You Conduct Business?” by Courtney Fairchild of Global Services, [Pilieromazza’s Jon Williams](#) advises “all federal contractors to take time to fully understand their rights and obligations under their contracts, communicate with their agency customers, and document all of the impacts that they are facing as a result of COVID-19.” He goes on

to say that “Contractors may be entitled to equitable adjustment and claims based on delays and increased costs of performance, but to consult an advisor before making a move, as every contractor’s situation is different.” [\[Read More\]](#)

### Related Government Contracts Law Presentations by PilieroMazza

**WEBINAR: CIO-SP4: A Virtual Town Hall Webinar**, April 23, 2020, [Cy Alba](#) and [Reena Bhatia](#). [\[Read More\]](#)

**WEBINAR: PCI Subcontracting Summit 2020: Flowdowns**, April 28, 2020, [Cy Alba](#). [\[Read More\]](#)

### **LABOR & EMPLOYMENT LAW**

**DOL Issues Temporary Regulations on Day the FFCRA Became Law**, April 2, 2020, [Nichole Atallah](#), [Sarah Nash](#) and [Sara Nasser](#)

The Families First Coronavirus Response Act (FFCRA) went into effect on April 1<sup>st</sup>. That same day, the Department of Labor (DOL) issued temporary regulations to implement the new provisions of the Expanded Paid Sick Leave Act and the Expanded Family and Medical Leave Act. The much-anticipated regulations generally follow the additional guidance provided by the DOL in the past few weeks. We previously wrote on the FFCRA on March 18, 2020 ([link](#)), and on the additional guidance provided by the DOL on March 30, 2020 ([link](#)). *For employers, the DOL regulations clarify certain new details regarding implementation of the FFCRA.* [\[Read More\]](#)

**FFCRA Leave Effective April 1: DOL Issues Additional Guidance**, March 31, 2020, [Nichole Atallah](#), [Sarah Nash](#) and [Sara Nasser](#)

*DOL has issued additional guidance to assist employers in providing FFCRA emergency sick and family leave.* We previously wrote on the FFCRA on March 18, 2020 ([link](#)). Read our coverage with important information for FFCRA implementation. [\[Read More\]](#)

### **DOL Implements FMLA Public Health Emergency Leave**

The Secretary of Labor issued a temporary rule to implement public health emergency leave under Title I of the Family and Medical Leave Act (FMLA) and emergency paid sick leave to assist working families facing public health emergencies arising out of the COVID-19 pandemic. The leave is created by a time-limited statutory authority established under the FFCRA and is set to expire on December 31, 2020. The FFCRA and the temporary rule do not affect the FMLA after December 31, 2020. This rule is effective April 2, 2020. Read the published version [here](#).

### **Preliminary Estimate of the Budgetary Effects of FFCRA**

The Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) have completed a preliminary estimate of the budgetary effects of FFCRA. On a preliminary basis, CBO and JCT estimate that the FFCRA will increase federal deficits by \$192 billion over the 2020-2030 period, mostly in fiscal years 2020 and 2021. That estimate includes:

- a \$2.4 billion increase in discretionary spending stemming from emergency supplemental appropriations;

- a \$95 billion increase in mandatory outlays; and
- a \$94 billion decrease in revenues.

Read the full preliminary report [here](#).

### **Temporary Paid Leave and Family Medical Leave Guide**

Because the FFCRA created new temporary paid sick leave and paid FMLA programs that are 100% reimbursable by the federal government, the U.S. Chamber of Commerce created a guide that provides information on requirements, employee eligibility, paid leave calculations, and exemptions. The guide is available for download [here](#).

### **Employee Retention Tax Credit Guide**

Because the CARES Act created a new employee retention tax credit for employers who are closed, partially closed, or experiencing significant revenue losses as a result of the coronavirus pandemic, the U.S. Chamber of Commerce created a guide to help businesses check their eligibility, calculate their credit, and understand which employees count toward eligibility, among other information. The guide is available for download [here](#).

## **BUSINESS & CORPORATE LAW**

### **Affiliation in the Context of SBA Loans, Guidance for Venture Capital Investors, March 31, 2020**

In a guidance document published by the National Venture Capital Association, "Affiliation in the Context of SBA Loans, Guidance for Venture Capital Investors," [PilierioMazza's Kathryn Hickey](#) offers key takeaways for venture capital investors concerned about SBA affiliation rules in the context of SBA loans. [\[Read More\]](#)

### **CARES Act Stimulus Loans: "Founders & Friends" Podcast Features Kathryn Hickey, April 1, 2020**

[Kathryn Hickey](#), Chair of [PilierioMazza's Business & Corporate Group](#), examines the CARES Act stimulus loans—including the Payroll Protection Program and the EIDL—and what small businesses and their investors need to know in terms of eligibility requirements, the application process, affiliation concerns, loan forgiveness, and much more. [\[Read More\]](#)

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#### **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:

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- Cybersecurity & Data Privacy
- Emerging and Developing Industries
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- Information Technology
- Manufacturers and Suppliers
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