

Pilieromazza Weekly Update for Government Contractors and Commercial Businesses

May 15, 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 for immediate assistance.

CLIENT ALERT: SBA, Treasury Issue New Guidance Concerning Good-Faith Certification on the Necessity of Loan Request, May 13, 2020, [Cy Alba](#), [Kathryn L. Hickey](#), and [Jon Williams](#). [[Read More](#)]

CLIENT ALERT: SBA Implements WOSB / EDWOSB Certification Requirement and Revises Economic Disadvantage Criteria for 8(a) Eligibility, Including Treatment of Retirement Accounts, May 13, 2020, [Meghan Leemon](#). [[Read More](#)]

CLIENT ALERT: Social Engineering Fraud: 4 Steps Every Company Needs to Take Right Now, May 13, 2020, [Matt Feinberg](#). [[Read More](#)]

CLIENT ALERT: House Introduces Legislation to Modify Existing PPP Regulations, May 12, 2020, [Cy Alba](#). [[Read More](#)]

CLIENT ALERT: House Introduces New Legislation Allowing Startups to Access PPP Funding, May 12, 2020, [Cy Alba](#). [[Read More](#)]

Pilieromazza Adds Attorneys to List of Super Lawyers®, May 7, 2020

[Pilieromazza](#) is pleased to announce that [Kathryn Hickey](#), [Lauren Brier](#), and [Sara Nasseri](#) are now among the Firm’s 13 attorneys distinguished with a listing in the 2020 edition of [Super Lawyers®](#). Attorneys from PilieroMazza’s four core practice areas—including [Government Contracts](#), [Business & Corporate](#), [Labor & Employment](#), and [Litigation & Dispute Resolution](#)—are represented in this year’s list. [[Read More](#)]

JD Supra: PilieroMazza #1 for Government Contracts Legal Thought Leadership, May 5, 2020

[Pilieromazza](#)’s [Government Contracts](#) attorneys and their thought leadership took the #1 position in this year’s [JD Supra Readers’ Choice Top Firm 2020 Award](#). Recognized by readers as the Firm’s

leading author for content on government contracts law is [Sam Finnerty](#), who earned the [JD Supra Readers' Choice Top Author 2020 Award](#) as one of their top 10 authors. [\[Read More\]](#)

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

State-by-State Business Reopening Guidance

To help track reopening differences across each state and provide the latest guidance and information to employers, the U.S. Chamber of Commerce has launched an interactive map with guides for each state. It provides the latest guidelines, timelines, and critical information for businesses aiming to restart safely and sustainably amid the pandemic. The map can be accessed [here](#).

Paycheck Protection Program Updates

New Senate Bill Could Make PPP Expenses Tax Deductible, May 7, 2020, [Cy Alba](#)

On May 6, 2020, members of the Senate Finance Committee introduced the [Small Business Expenses Protection Act of 2020](#), legislation that would allow some small businesses to deduct from their taxes expenses paid with their forgiven Paycheck Protection Program (PPP) loan. ***Should this bill become law, it would greatly modify current regulations surrounding tax-deductible expenses for small businesses.*** [\[Read More\]](#)

CARES Act and PPP: Important Updates Regarding Loan Forgiveness Calculations and Returns, May 6, 2020, [Cy Alba](#)

On May 5, 2020, SBA and the Treasury Department (Treasury) revised their Frequently Asked Questions (FAQ) concerning the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the PPP. ***Of note, this new guidance clarifies PPP loan forgiveness amount calculations and extends the deadline for PPP borrowers to return loan proceeds.*** [\[Read More\]](#)

SBA Issues PPP Guidance on Laid-Off Employees Who Refuse to be Rehired

SBA and the Treasury published an FAQ and corresponding answer regarding whether a borrower's PPP loan forgiveness amount would be reduced if the borrower laid off an employee, offered to rehire the same employee, and the employee declined the offer. SBA and the Treasury indicated that the PPP loan forgiveness amount would not be reduced, but to qualify for this exemption on the limits of loan forgiveness, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. SBA and the Treasury further noted that employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation. The FAQ can be found [here](#), and you can read the Journal of Accountancy's coverage of this FAQ [here](#).

New Paycheck Protection Program-Related Interim Final Rules

SBA issued several interim final rules that supplement previously posted PPP-related interim final rules with additional guidance.

1. Business Loan Program Temporary Changes, Nondiscrimination, and Additional Eligibility Criteria

Effective since May 8, 2020, this rule answers the questions:

- Are loan recipients entitled to exemptions on the grounds provided in federal nondiscrimination laws for sex-specific admissions practices, sex-specific domestic violence shelters, coreligionist housing, or Indian tribal preferences in connection with adoption or foster care practices?
- Do student workers count when determining the number of employees for loan eligibility?

Read the published version [here](#).

2. Disbursements

Effective since May 4, 2020, this interim final rule applies to applications submitted under the PPP through June 30, 2020, or until funds made available for this purpose are exhausted. It answers the questions:

- Can a borrower take multiple draws from a PPP loan and thereby delay the start of the eight-week covered period?
- By when must a lender electronically submit an SBA Form 1502 indicating that PPP loan funds have been disbursed?

Read the published version [here](#).

3. Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders

Effective since May 4, 2020, this interim final rule applies to applications submitted under the PPP through June 30, 2020, or until funds made available for this purpose are exhausted. It answers the questions:

- Can a single corporate group receive unlimited PPP loans?
- Can a non-bank lender or non-insured depository institution be approved to be a lender in the PPP if it has originated, maintained, or serviced—but not performed all three of these functions for—more than \$50 million in business loans or other commercial financial receivables during a 12-month period in the past 36 months?

- Can a non-bank lender that does not meet the \$50 million threshold in the first interim final rule for originating, maintaining, and servicing loans or receivables apply to be a lender in the PPP?

Read the published version [here](#).

Upcoming Small Business Programs & Advisory Services Presentations

WEBINAR: Understanding and Avoiding Affiliation Under Small Business Contracting Programs, June 3, 2020, [Jason Blindauer](#). [[Read More](#)]

CYBERSECURITY & DATA PRIVACY

DOD CMMC FAQ Update

The Department of Defense (DOD) updated its Cybersecurity Maturity Model Certification (CMMC) FAQ, so question 19 states, “companies that solely produce Commercial-Off-The-Shelf (COTS) products do not require a CMMC certification.” This is a change from previous statements that all defense contractors, regardless of their size or what they sell, will need the new certification to do business with DOD. The FAQ can be found [here](#).

GOVERNMENT CONTRACTS LAW

FAR Council Rulemaking Error Requires GSA Contractors to Qualify As Small at Time of Award for Certain Orders, May 6, 2020, [Sam Finnerty](#)

As we recently [wrote](#), the FAR Council published a final [rule](#) on February 27, 2020, that amends the Federal Acquisition Regulation (FAR) to capture regulatory changes made by SBA in 2013, including those pertaining to size representation / certification. However, in drafting the rule, the FAR Council made a critical change that not only deviates from SBA regulations, but also runs counter to everything we know about when the size status of a contractor is determined. ***All small business concerns should be aware of this rule change and should consult counsel regarding their small business representation duties.*** [[Read More](#)]

DOD Memo: Procurement Integrated Enterprise Environment Capabilities

DOD Acting Principal Director of Defense Pricing and Contracting Kim Herrington released a memorandum on [Procurement Integrated Enterprise Environment](#) (PIEE) capabilities. The memorandum highlighted two capabilities recently added to PIEE that enable exchanges of information with industry in a secure, traceable environment.

- **Solicitation Module:** The solicitation module enables posting of solicitations to a widespread or restricted audience. A vendor registration guide for contractors on how to set up accounts in the system is available [here](#). Further training for the solicitation module is available [here](#).

- **Contracting Communication Module:** The communication module in PIEE enables secure transmission of messages and files among the parties involved in administering a contract. Training for the contracting communication module is available [here](#).

Read the full memo [here](#).

DOD Memo: Update to Standard Procurement System Sunset Date

DOD Acting Principal Director of Defense Pricing and Contracting Kim Herrington released a memorandum to update the Standard Procurement System (SPS) sunset date established in an April 28, 2020, memorandum. DOD's updated goal is that no contracts, agreements, orders, or solicitations be awarded through SPS after September 30, 2023. Use of SPS for changes to documents issued prior to September 30, 2023, is expected to continue until September 30, 2026. The full memo and April 28, 2020, memo are available [here](#).

FAR Rule Updates

DOD, the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) issued a summary presentation of Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in the Federal Acquisition Circular for May 6, 2020.

1. Revocation of Executive Order on Non-Displacement of Qualified Workers

This final rule removes subpart 22.12, entitled "Nondisplacement of Qualified Workers Under Service Contracts", and a related contract clause, from the FAR. The final rule applies to service contracts that succeed a contract for performance by service employees of the same or similar work at the same location. Read the published version [here](#).

2. Applicability of Inflation Adjustments of Acquisition-Related Thresholds

This final rule makes inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908 applicable to existing contracts and subcontracts in effect on the date of the adjustment. Read the published version [here](#).

3. Tax on Certain Foreign Procurements

This final rule withholds a two percent tax on contract payments made by the U.S. government to foreign persons pursuant to certain contracts. This rule applies to federal government contracts for goods or services that are awarded to foreign persons. Read the published version [here](#).

A companion small entity compliance guide to the rules is available [here](#).

CIO-SP4 for Government Contractors with Cy Alba, May 7, 2020

[Cy Alba](#) recently connected with [ProposalHelper](#) CEO [Reena Bhatia](#) for a town hall Q&A session on CIO-SP4, the multi-billion dollar contract vehicle that is sending ripples through the government contracting community. [[Read More](#)]

VIDEO: Past Performance: How to Use Yours, Benefit from Others’, and Defend It from Attacks, May 13, 2020, [Sam Finnerty](#). [[Watch Here](#)]

Upcoming Government Contracts Law Presentations

WEBINAR: COVID-19 Legislation: What Federal Contractors Need to Know, May 20, 2020, [Cy Alba](#). [[Read More](#)]

WEBINAR: PCI Subcontracting Summit 2020: Subcontracting Plans, May 26, 2020, [Cy Alba](#). [[Read More](#)]

LABOR & EMPLOYMENT LAW

VIDEO: SCA Compliance Challenges in a COVID 19 Environment, May 5, 2020, [Nichole Atallah](#) and [Sarah Nash](#). [[Watch Here](#)]

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

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