



Pilieromazza Weekly Update for Government Contractors and Commercial Businesses

May 29, 2020

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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.

LABOR & EMPLOYMENT LAW

Creating a New Normal: 5 Steps for Employers Preparing a Returning Workforce in a COVID-19 Environment, May 21, 2020, [Sara Nasseri](#)

As government authorities slowly begin the reopening process, employers are now preparing to reopen facilities and return employees to their worksites. Undoubtedly, with the COVID-19 pandemic still ongoing, a return to work certainly will not mean a return to how things used to be, and employers will need to implement new processes and procedures to adequately prepare employees and comply with state and local requirements. ***This brief guide outlines various considerations employers will have to make to gradually and safely bring their workforce back and create a new normal.*** [\[Read More\]](#)

EEOC Delays Collection of EEO-1 Data Due to COVID-19, May 11, 2020, [Sara Nasseri](#)

In light of the public health emergency caused by COVID-19, the Equal Employment Opportunity Commission (EEOC) announced that it will delay collection of EEO-1 Component 1 data until March 2021. Under federal law, businesses with at least 100 employees and federal contractors with at least 50 employees and a federal contract of \$50,000 or more generally must file an EEO-1 form each year. ***This development gives government contractors a one-year extension to file their 2019 Component 1 data.*** [\[Read More\]](#)

CDC Business Guidelines Released

The Washington Post reported that the Centers for Disease Control and Prevention (CDC) laid out its road map for reopening schools, child-care facilities, restaurants, and mass transit. The CDC cautioned that some institutions should stay closed for now and said reopening should be guided by coronavirus transmission rates. Read more from the Washington Post [here](#). The CDC's full guidelines are available [here](#).

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 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](#). It is part of the Chamber's new digital resources center, which provides tools and guidance to help employers reopen their businesses safely and sustainably. The U.S. Chamber resource center is available [here](#).

New Form I-9 Mandatory and Use of Expired Documents

The Howard County Chamber of Commerce reported that, effective May 1, 2020, employers are required to use a [revised Form I-9](#) and complete an employee's Form I-9 within three days of their first day of work. The Department of Homeland Security has also issued a temporary policy to allow employers to accept expired List B documents when completing the Form I-9. This policy is intended to account for the fact that many people are unable to renew their driver's licenses or state ID cards at this time due to stay-at-home orders. Helpful FAQ on temporary I-9 policies are available [here](#) from the U.S. Citizenship and Immigration Services.

Upcoming Labor & Employment Law Presentations

WEBINAR: Return to Work Plan: Not Business as Usual, June 2, 2020, [Nichole Atallah](#) and [Sarah Nash](#). [\[Read More\]](#)

WEBINAR: Nuts and Bolts of SCA, July 14, 2020, [Nichole Atallah](#). [\[Read More\]](#)

SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

House Passes \$3 Trillion HEROES Act

On May 15, 2020, the House of Representatives passed a new stimulus bill called the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act. The Professional Services Council (PSC) applauded the inclusion of a contractor-focused title in the legislation designed to help the economy in response to the coronavirus pandemic.

Specifically, PSC applauded provisions that would:

- require that federal agencies allow contractor personnel to telework to the maximum extent practical during the coronavirus emergency;
- support the economy for companies of all sizes by requiring paying prime contractors within 15 days of the submission of a valid invoice;
- require government-wide, uniform guidance to clarify the coverage provided under Section 3610 of the CARES Act; and
- ensure that contractors are not penalized by adverse performance ratings due to contract disruptions caused by the coronavirus emergency.

Small business provision summaries for the bill can be found [here](#) and [here](#). The full text is available [here](#), and a fact sheet on the bill is available [here](#). Additional information on the bill is available [here](#) from PSC.

DOD Issues New CARES Act, Section 3610 Guidance, May 19, 2020, [Cy Alba](#)

Guidance from the Department of Defense (DOD) has finally been issued related to Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which allowed for payments to federal contractors to keep non-working employees at the ready to return to work when required to do so. The CARES Act allows contracting officers to pay contractors at the “minimum applicable billing rates” for any employees who cannot perform work at a government site or government-approved contractor site due to a shutdown of said site because of COVID-19. That is a statutory allowance and, as such, cannot be changed by any agency action. However, there has been confusion about specific terms in the statute and conflicting guidance coming out of various agencies. ***While this new guidance does not clear up the inconsistencies, it does help clarify how DOD is going to treat contractor requests for 3610 funding.*** [\[Read More\]](#)

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](#)

Just under one year ago, we [wrote](#) about the Small Business Administration’s (SBA) proposed rule regarding implementing a certification requirement for Women-Owned Small Businesses (WOSBs) / Economically Disadvantaged Women-Owned Small Businesses (EDWOSBs) and revised economic disadvantage criteria for 8(a) eligibility. SBA’s [final rule](#) was recently published, implementing just that. ***The rule will impact businesses seeking to compete for government contracts under the WOSB and 8(a) Business Development programs.*** [\[Read More\]](#)

DOC Class Deviation: Accelerated Payments to Small Business Contractors and Subcontractors

Barry Berkowitz, Senior Procurement Executive and Director for Acquisition Management at the Department of Commerce (DOC), issued a class deviation to the FAR. The class deviation was issued to provide for accelerated payments to contractors that are small businesses and to small-business subcontractors by accelerating payments to their prime contractors. The class deviation is applicable to (1) all solicitations and contracts awarded on or after the issuance date of the class deviation and (2) contracts awarded prior to the issuance date of the class deviation, if new orders are placed against them. The deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR. Read the full class deviation [here](#).

GSA COVID-19 Industry Training Resource Slides

The National 8(a) Association reported that the General Services Administration (GSA) Office of the Procurement Ombudsman recently disseminated GSA COVID-19 Industry Training resource slides to major industry associations to highlight and consolidate the vast amount of coronavirus-related information and documentation available on Acquisition.Gov. The slides are accessible [here](#).

Paycheck Protection Program Updates

SBA Issues Long-Awaited PPP Loan Forgiveness Application, May 18, 2020, [Cy Alba](#) and [Kathryn Hickey](#)

SBA recently issued its Paycheck Protection Program (PPP) Loan Forgiveness Application. *The application walks borrowers through a step-by-step process to determine loan forgiveness amounts based upon the information the borrower enters.* [\[Read More\]](#)

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

On May 13, 2020, SBA and the Treasury Department (Treasury) released [new guidance](#) concerning good-faith certification for PPP loan requests. *This new guidance clarifies that businesses seeking a PPP loan of less than \$2 million will have made their request in good faith unless proven otherwise.* [\[Read More\]](#)

House Introduces Legislation to Modify Existing PPP Regulations, May 12, 2020, [Cy Alba](#)

On May 11, 2020, Congressmen Chip Roy and Dean Phillips introduced the Paycheck Protection Flexibility Act, new legislation meant to provide additional assistance to businesses impacted the coronavirus pandemic. *This bill would make major adjustments to the current PPP should it become law.* [\[Read More\]](#)

House Introduces New Legislation Allowing Startups to Access PPP Funding, May 12, 2020, [Cy Alba](#)

On May 8, 2020, Congresswomen Anna Enshoo and Cathy McMorris introduced the [Caring for Startup Employees Act of 2020](#), a bipartisan piece of legislation aimed at granting more economic assistance to startup companies through the PPP. *Should this bill become law, it would dramatically increase the number of companies eligible for PPP loans.* [\[Read More\]](#)

U.S. Firms Canceled at Least \$18 Billion in Small-Business Loans

Bloomberg News reports that U.S. companies have canceled at least \$18 billion in loans from the PPP. This number is much larger than figures previously disclosed by publicly traded companies that gave back millions of dollars after there was public backlash following reports that large companies received millions of dollars in PPP loans at the expense of small businesses. Cancellations include returned funds, duplicative loans, and loans not closed for any reason. Read more [here](#).

Implementation of the PPP Requirements

The SBA Office of Inspector General (OIG) released a flash report titled “Small Business Administration’s Implementation of the PPP Requirements.” The OIG analyzed key provisions of Section 1102 of the CARES Act, SBA’s related interim final rules, and public guidance intended to further inform stakeholders of SBA’s implementation of the PPP. The OIG found that SBA’s interim final rules and FAQs mostly aligned with the Act. The OIG identified the following areas, however, that did not fully align with the Act’s provisions:

- Prioritizing Underserved and Rural Markets
- Loan Proceeds Eligible for Forgiveness

- Guidance on Loan Deferments
- Registration of Loans

Read the full report [here](#).

New Report Says Much of Bailout Stimulus Money Remains Unspent

The COVID-19 Congressional Oversight Commission (COC) released a report finding that the Treasury had spent very little from a \$500 billion fund created by the CARES Act to help businesses and local governments, even though many of these entities have asked for immediate help. Read coverage from the Washington Post [here](#). The COC's report is available [here](#).

No Deduction Allowed for Business Expenses Paid with Forgiven PPP Loans

The Congressional Research Service (CRS) released a report titled "IRS Guidance Says No Deduction Is Allowed for Business Expenses Paid with Forgiven PPP Loans." On April 30, 2020, the Internal Revenue Service (IRS) issued Notice 2020-32, which clarifies the IRS's position that PPP loan recipients cannot claim a deduction for expenses funded from the forgiven PPP loans. IRS's guidance could reduce the perceived economic benefit of PPP loans and require some taxpayers to alter how they compute their taxes for 2020 compared to previous years. With this said, many businesses could still find that the economic benefits of PPP loans outweigh the potential costs. Read the full CRS report [here](#).

New PPP-Related Interim Final Rules

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

1. Loan Increases, Disbursements, and 1502 Reporting

Effective since May 19, 2020, this rule answers the questions:

- If a partnership received a PPP loan that did not include any compensation for its partners, can the loan amount be increased to include partner compensation?
- If a seasonal employer received a PPP loan before the alternative criterion for determining the maximum loan amount for seasonal employers became available, can the loan amount be increased based on a revised calculation using the alternative criterion?
- If a borrower's PPP loan has already been fully disbursed, can the lender make an additional disbursement for the increased loan proceeds?
- How do lenders report disbursements on PPP loans that are increased, and does the increase in the loan delay the timeframe to report the loan on the SBA Form 1502?

Read the published version [here](#).

2. Eligibility of Certain Electric Cooperatives

Effective since May 19, 2020, this rule answers the question:

- Are electric cooperatives that are exempt from federal income taxation under section 501(c)(12) of the Internal Revenue Code eligible for a PPP loan?

Read the published version [here](#).

3. Treatment of Entities With Foreign Affiliates

Effective since May 21, 2020, this rule answers the question:

- Are employees of foreign affiliates included for purposes of determining whether a PPP borrower has more than 500 employees?

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](#)]

WEBINAR: Past Performance: How to Use Yours, Benefit from Others', and Defend It from Attacks, June 8, 2020, [Sam Finnerty](#). [[Read More](#)]

WEBINAR: PPP Forgiveness—Is it Forgivable?, June 9, 2020, [Cy Alba](#). [[Read More](#)]

LITIGATION & DISPUTE RESOLUTION

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

Social engineering fraud is affecting companies of all sizes, both domestic and international, across all industries. Although social engineering fraud has been around for years—consider all the unsolicited emails you have received from so-called Nigerian princes—in 2020, we are seeing a huge rise in the number of social engineering fraud attacks perpetrated against government contractors. Even more concerning, the thieves are becoming bolder and more brazen, defrauding unsuspecting companies of hundreds of thousands of dollars or more. By the time the company realizes it is a victim of fraud and contacts the bank, the money has been withdrawn. ***All companies (particularly government contractors) must take immediate action to protect themselves from social engineering attacks that could result in losses in the hundreds of thousands or even millions of dollars.*** [[Read More](#)]

CYBERSECURITY & DATA PRIVACY

New CMMC Rules for Defense Contractors to Come in November

National Defense magazine reports that defense contractors should expect to see new Cybersecurity Maturity Model Certification (CMMC) version 1.0 requirements in requests for proposals released in November. The requirements are a reflection of the Pentagon's push to protect defense industrial base networks and controlled unclassified information from cyber attacks. The CMMC rules will require contractors to be certified by third-party auditors, which will ensure that companies are adhering to certain standards. Organizations will be required to meet different levels of security, with level one being the lowest and level five the most stringent. Read more [here](#).

GOVERNMENT CONTRACTS LAW

JEDI Update: AWS Files Agency-Level Protest with Pentagon, May 12, 2020, [Lauren Brier](#)

The ongoing public feud between Microsoft and Amazon Web Services (AWS) over DOD's Joint Enterprise Defense Infrastructure (JEDI) Cloud contract saw three major developments over the last thirty (30) days. *This blog provides an update on the JEDI protest, which has potential implications for the government contracting community.* [\[Read More\]](#)

Upcoming Government Contracts Law Presentations

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

About PilieroMazza

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