



PilierioMazza Weekly Update for Government Contractors and Commercial Businesses

October 22, 2019

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LABOR & EMPLOYMENT LAW

DoL Collected a Record Amount in Discrimination Settlements in Fiscal Year 2019

According to Bloomberg Government, the Department of Labor (DoL) collected more than \$27 million from federal contractors like Goldman Sachs, Dell, and Bank of America in fiscal year 2019 workplace discrimination settlements—a new record for the agency. Bloomberg Law indicated that settlement totals, which include back pay and interest for job applicants and workers, increased by more than 65% compared to the previous fiscal year's \$16 million. Per Bloomberg Government, the prior high for DoL's Office of Federal Contract Compliance Programs (OFCCP) was almost \$24 million in fiscal year 2017.

President Trump Issues Memorandum for Agency Heads Regarding CBAs

On October 11, 2019, President Trump issued a memorandum addressed to the heads of Executive Departments and agencies clarifying that agencies must adhere to the terms of collective bargaining agreements (CBAs) executed while provisions of three Executive Orders were enjoined. In May 2018, President Trump signed three Executive Orders that required agencies to negotiate collective bargaining agreements that would reduce costs and promote government performance and accountability. The three Executive Orders were partially enjoined by the District Court for the District of Columbia; the injunction barred enforcement of particular sections of each Executive Order. In July 2019, the Court of Appeals for the District of Columbia Circuit vacated the injunction. Now that the injunction has been lifted, President Trump has clarified that (1) agencies must adhere to the terms of CBAs executed while the injunction was in effect, (2) agencies currently engaged in collective-bargaining negotiations must comply with the terms of the three Executive Orders, and (3) agencies that executed agreements that would be incorporated into CBAs prior to the end of the injunction that incorporate terms prohibited by the Executive Orders may execute new CBAs consistent with the Executive Orders. Read the full memorandum [here](#).

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GOVERNMENT CONTRACTS LAW

Helping Government Contractors Prevent Unwarranted Tax Liabilities in Afghanistan, October 17, 2019, [Lauren Brier](#)

On September 20, 2019, the Department of Defense (“DoD”), General Services Administration (“GSA”), and National Aeronautics and Space Administration (“NASA”), published a document proposing to amend the Federal Acquisition Regulation (“FAR”) to add two new clauses that notify contractors about the exemptions from liability for Afghanistan taxes, customs, duties, fees or similar charges. Comments for the proposed rule will continue to be accepted on or before November 19, 2019. ***Small and large government contractors performing in Afghanistan need to ensure they are registered to do business in Afghanistan and have the proper tax-exemption certificates in place prior to performance to avoid incurring Afghan tax liabilities that are otherwise exempt.*** [\[Read More\]](#)

OIG Report Released Analyzing Management and Performance Challenges Facing SBA

The Small Business Administration’s (SBA) Office of Inspector General (OIG) released a report titled, “The Most Serious Management and Performance Challenges Facing SBA in FY 2020.” The overall goal of the report is to focus attention on significant issues with the objective of working with SBA managers to enhance the effectiveness of the SBA’s programs and operations. While the SBA made progress addressing this year’s management challenges, the OIG’s audits and investigations continue to find the SBA facing significant risks in loan program oversight and controls, oversight of its statutory programs to promote small business development and government contracting, and deploying information technology and cybersecurity controls. Read the full report [here](#).

CRS Examines Small Business Management and Technical Assistance Training Programs

The Congressional Research Service (CRS) released a report titled, “Small Business Management and Technical Assistance Training Programs.” The SBA has provided technical and managerial assistance to small businesses since it began operations in 1953. Initially, the SBA provided its own small business management and technical assistance training programs. Over time, the SBA has relied increasingly upon third parties to provide that training. The CRS report examines the historical development of federal small business management and technical assistance training programs; describes their current structures, operations, and budgets; and assesses their administration and oversight and the measures used to determine their effectiveness. It also discusses legislation to improve program performance, including P.L. 114-88, the Recovery Improvements for

Small Entities After Disaster Act of 2015 and P.L. 115-141, the Consolidated Appropriations Act of 2018. Read the full report [here](#).

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PODCAST: PilieroMazza's *GovCon Live!* presents "Ex Rel. Radio," our multi-part series on the False Claims Act, which will include commentary on potential pitfalls for your company, enforcement issues, and emerging trends. Check out our latest episode "Prevention Is Priceless: FCA Protection in the Healthcare Industry" with [Michelle Litteken](#) and [Jon Williams](#), which went live today. [\[Read More\]](#)

WEBINAR: "Past Performance" of Government Contractors: Obtaining It, Using It, and Defending It, October 29, 2019, Speaker: [Kathryn Flood](#) and [Sam Finnerty](#). [\[Read More\]](#)

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SMALL BUSINESS PROGRAMS & ADVISORY SERVICES

A Thank You to the Small Business Administration: SBA Takes a Stand on OIG's Approach to Suspension and Debarment, October 16, 2019, [Isaias "Cy" Alba IV](#)

The ability to suspend and debar contractors is a tool the federal government can deploy when necessary to protect it from unscrupulous contractors. Critically, it is not intended to be used punitively. The reason for this is clear, especially when dealing with small businesses: if you debar or suspend a company without evidence that it is not a responsible contractor, you risk destroying part of the United States' industrial base and numerous jobs that Americans rely on without good cause. Too often the Inspector Generals look to "shoot first and ask questions later" when it comes to suspension and debarment, taking a "guilty until proven innocent" approach. This approach can have catastrophic effects for small businesses. *Luckily, the Small Business Administration's ("SBA") suspension and debarment officials understand this risk and have taken to heart the underlying principles, enshrined in law, that all government contractors are innocent until proven guilty.* [\[Read More\]](#)

CRS Examines SBA's 7(a) Loan Guaranty Program

The Congressional Research Service (CRS) released a report titled, "Small Business Administration 7(a) Loan Guaranty Program." The SBA administers several programs to support small businesses, including loan guaranty programs designed to encourage lenders to provide loans to small businesses "that might not otherwise obtain financing on reasonable terms and conditions." The SBA's 7(a) loan guaranty program is considered the agency's flagship loan program. The CRS report discusses the rationale provided for the 7(a) program; the program's borrower and lender eligibility standards and program requirements; and program statistics, including loan volume, loss rates, use of proceeds, borrower satisfaction, and borrower demographics. It also examines issues raised concerning the SBA's administration of the 7(a) program, including the oversight of 7(a) lenders and the program's lack of outcome-based performance measures. The report also surveys congressional and presidential actions taken in recent years to enhance small businesses' access to capital. Read the full report [here](#).

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