

## Dan Gordon Leaves Legacy of Unfinished Business at CAS Board

Written by Nick Sanders  
Friday, 09 December 2011 00:00

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In his periodic regulatory update newsletter, respected attorney and ADR judge Charles Rumbaugh reported—

Dan Gordon, Administrator for the Office of Federal Procurement Policy, announced that later this year he will be leaving the post to serve as Associate Dean for Government Contracts Law at the George Washington University Law School.

“Yeah; so what? Why is this even worth reading about? And who’s Dan Gordon?”

We can answer those questions. For those readers who are not familiar with the intricacies of inside-the-Beltway-bureaucracy, the OFPP Administrator sets procurement policy across the Executive Branch, and also acts as Chair of the CAS Board. So when it is reported that the OFPP Administrator is moving on, that also means that the CAS Board is rudderless until the new Administrator is confirmed.

So that’s the big deal.

As [this article](#) reports—

Gordon spent much of his tenure focusing on strengthening the acquisition workforce, including trying to grow the number of contracting officers and other key positions. OFPP also set new standards and certification requirements for contracting officer representatives ... Through training sessions at the Federal Acquisition Institute and the Defense Acquisition University, OFPP can track how agencies are growing both the number and training of contracting officers and their representatives.

Yes, that’s true insofar as it goes. But what the story doesn’t report is how little Mr. Gordon accomplished as Chair of the CAS Board.

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Sure, the CAS Board recently [killed](#) a CAS exemption. And they are currently considering conforming another exemption to match recent changes to the FAR Part 15 TINA rules. And they've published an interim rule that conforms the CAS applicability threshold to the TINA threshold (currently \$700,000). But that's about it. The list of unfinished business and/or unfinished work is much longer than the list of CAS Board accomplishments. Let's look at what hasn't been done ....

First and foremost, the CAS Board has failed to issue a final rule on "pension harmonization" that would align Standards 412 and 413 with the Pension Protection Act of 2008. As we've [reported](#) before, "Congress required the CAS Board to publish a 'CAS Harmonization Rule' by not later than January 1, 2010, with a mandated applicability date of January 1, 2011." Well, here it is in early December, 2011, and we're still waiting for that rule. Astute readers will notice that the CAS Board is coming up on a milestone—it is about to miss the congressionally mandated deadline by *two years*.

And this is a big deal, in and of itself, because (as we said), "...someday soon there is going to be a reckoning, as CAS-covered contractors with defined benefit pension plans notify contracting officers of the contract price increases stemming from the new CAS rules."

On August 26, 2011, the CAS Board [published a notice](#) that it was discontinuing its efforts to amend CAS 416 regarding use of the term "catastrophic losses". In its notice, the CAS Board gave a brief history of its efforts, stating—

In a letter dated September 26, 2000, the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics requested that the Board consider whether the word 'catastrophic' in the term 'catastrophic losses' should be replaced with a term such as 'significant' or 'very large' in [CAS 416 at] 9904.416-50(b)(1) in order to (a) more closely align the Standard with what was intended by its original promulgators and (b) eliminate any confusion between 9904.416-50(b)(1) and FAR 31.205-19, Insurance cost. At its May 13, 2005 meeting, the CAS Board directed the staff to begin work on a Staff Discussion Paper (SDP). On January 26, 2006, the Board published the SDP, 'Accounting for Insurance Costs' (71 FR 4335) which in particular, addressed the use of the term 'catastrophic losses' in CAS 416.

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So, to be clear, this specific effort was requested by the DOD in 2000. After five years, the CAS Board began its efforts, culminating in an SDF published a year later in 2006. Since then ... *not hing*

. Now, after another five years have passed, the CAS Board says that there never was any need for any effort in the first place, stating—

Although CAS 416 has been in effect for over 30 years, the respondents provided no data on problems or disputes related to the meaning of the term ‘catastrophic losses.’ At this time, the Board believes that no amendments to CAS 416 regarding the use of the term ‘catastrophic losses’ are necessary and is hereby discontinuing further rulemaking in this case.

In other words, it took the CAS Board eleven years to conclude that its efforts would be more productively spent elsewhere.

On the same day (August 26, 2011), the CAS Board also published [another notice](#) stating that it was discontinuing its efforts to amend CAS 403. For those unfamiliar with the Standard, it requires that contractors use a “three-factor formula” to allocate residual home office expenses, when those residual home office expenses exceed a proportion of certain revenue thresholds. The revenue thresholds have not been updated since the original promulgation of Standard 403 in 1973. Since then, there has been significant inflation (reportedly on the order of 400 percent) and, at the urging of interested parties, an industry group and a Federal agency, the CAS Board started an effort to determine whether it was time to update the revenue thresholds.

(That would seem to be a no-brainer. Yet the CAS Board worked on the project for years before it discontinued its efforts.)

Why did the CAS Board stop its efforts at updating 1973 values to reflect modern reality? In its own words—

After reviewing the comments and regulatory history of CAS 403, the CAS Board believes that it would be prudent to discontinue the review of the CAS 403 three factor formula operating revenue thresholds at this time. No evidence has been presented to the Board that the current thresholds are creating an inequity, or that adjusting the thresholds would substantially change the outcome, i.e., the pool of contractors required to use the three factor formula to allocate

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residual home office expenses to the segments would not change significantly.

Well, there you go. It is Mr. Gordon's assessment that it would be "prudent" to stop efforts relating to CAS 403 because nobody presented any evidence that the revenue thresholds should be updated. The fact that the CAS Board never asked for that evidence, or failed to look for it, was kind of glossed-over, don't you think.

So, while important CAS issues such as those above, as well as the [valuation of ID/IQ contract types](#) for CAS applicability purposes or the definition of "[increased costs in the aggregate](#)," have been abandoned or unaddressed by the CAS Board he chaired, Mr. Gordon has declared victory with respect to training the Federal government's acquisition workforce.

We wish he had focused more on the CAS Board, and been able to declare "mission accomplished" with respect to that other area of his responsibility.