

Written by Nick Sanders  
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The “day of reckoning” that [we predicted](#) nearly two years ago has arrived.

The Honorable Shay Assad, DOD Director of Pricing, issued a memo on March 27, 2012 providing guidance to DCMA Contracting Officers on how to handle the recently enacted changes to Cost Accounting Standards (CAS) 412 and 413.

And Mr. Assad’s memo confirms what several industry insiders had long suspected: there is a class of government contractors who will miss out on the equitable adjustments to which they would otherwise be entitled if there were any real equity to be found in CAS administration. They will have to comply with the revised CAS requirements, but they will not be able to claim contract price adjustments for any increased costs associated with the revisions.

Let’s first define the class of contractors who are affected by the [CAS 412/413 revisions](#). The affected contractors have defined-benefit pension plans. And they are required to comply with CAS 412 and 413 because they are either (a) fully CAS-covered or (b) subject to the FAR Cost Principles (namely the Compensation Cost Principle found at FAR 31.205-6(j)). Let’s be clear: the majority of government contractors do

*not*

have defined-benefit pension plans; instead, they have defined-contribution pension plans. But enough do have such plans that the CAS revisions, intended to “harmonize” the CAS with the requirements of the Pension Protection Act of 2006, will create a fairly large ripple in the contract costs paid by DOD. Those contractors will be entitled (pursuant to the CAS administration regulations) to submit a “Request for Equitable Adjustment” (REA) that will make them whole from the cost impacts on their existing contracts from implementing the new pension cost accounting rules.

Now let’s define the class of contractors who will be screwed over by the CAS revisions. These contractors have defined-benefit pension plans but they are *not subject to full CAS coverage*. Instead, these contractors are required to comply with CAS 412 and 413 solely because they are performing on contracts that contain the Allowable Cost and Payment Clause (FAR 52.216-7), and the allowability of their pension costs is conditioned on complying with the requirements of CAS 412/413, because the FAR Cost Principle at 31.205-6(j) requires that they do so. The Assad memo confirms that these contractors will

*not*

be entitled to submit REAs to be made whole from the cost impacts on their existing contracts from implementing the new pension plan cost accounting rules.

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Don't believe us? Here's the [memo in question](#) .

The memo states that, effective February 27, 2012, the Cost Principle at 31.205-6(j) "will be construed to reference the new CAS 412 and 413," but "a cost-type contract awarded *before* February 27, 2012 that is

*not*

fully CAS-covered, will

*not*

have the calculation of the costs changed for the life of the contract..." (Emphasis in original.)

The rationale for this approach is that "the Cost and Payment Clause specifies the

FAR/DFARS cost principles in effect

*on the date of contract award*

as the standard for allowability." (Emphasis in original.)

Now, in fairness we have to acknowledge that the number of contractors who will be (a) impacted by the CAS 412/413 revisions and (b) are not subject to full CAS-coverage is not that large. In fact, we have no ability to estimate whether there are scores of screwed-over contractors, or perhaps only one or two. But we bet if you are one of those unlucky contractors, you know who you are and are steaming mad about this situation.

The Assad memo contains a lot of meat regarding how the impacts of the CAS revisions will be implemented by the affected contractors. It discusses impacts to Forward Pricing Rates, how the REAs will be processed, an extension of the normal 60-day advance notification rule for changes to contractors' Disclosure Statements, and how impacts by subcontractors are to be handled by the Primes. That's all important stuff and if you are an affected contractor you need to understand all that. The rest of you won't care, nor should you.

But what caught our eye was the treatment of the nonmajor contractors who are impacted by the rule but have no right of recovery because they technically are not subject to the CAS themselves. We have long argued that it makes little sense to exempt contractors from the burdensome requirements of CAS coverage, only to condition cost allowability on compliance with certain aspects of the Standards. And now, once again, we see the inequity of that situation.

## **DOD Reveals How Nonmajor Contractors Are Being Impacted by CAS 412/413 PPA Harmonization**

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Sorry guys, you're out of luck on this one.