

FCA'S TOP LEGISLATIVE ISSUES

IMMIGRATION REFORM

Immigration Bill: Comprehensive Reform That Just Won't Go Away—Congress may once again attempt to pass legislation that would revise the nation's immigration law when it returns from its Summer Recess in September. S.1639—the Administration's last attempt at passing an immigration overhaul bill—failed in June to win a cloture vote. Since that defeat, the GOP may propose another bill, mainly on enabling the 12M undocumented immigrants to stay in this country legally, but not on a path to citizenship (apparently a compromise between amnesty and expulsion).



This draft compromise will be introduced by Senator Arlen Specter (R-PA) to create a “conditional permanent resident status” program that would allow undocumented immigrants to register, receive legal status, and remain in the country indefinitely, as well as eliminate S.1639's elaborate point system. In essence, his measure would provide for a guest-worker program—but only after specific triggers were met, we experienced increased border security, and we implemented an employer verification system. Labor, however, mostly views such guest-worker programs as the flip side of NAFTA (i.e., simply bringing the cheaper global market here vs. shipping jobs overseas to the cheaper workforce)—either way they perceive these programs as a slap in the face to the U.S. workers.

Even more recently, Senator Kyl (R-AZ) introduced S.1984 which would create a special unit in the IRS to investigate violations of the tax code, seek higher penalties for employers who file inaccurate tax returns, institute new criminal penalties for misusing SSNs, make it a felony to misuse SSNs or SS cards, require the SSA and the DHS to share specific taxpayer identification information, require the SSA to issue new SS cards with photos, and require the DHS to establish a new employment verification system.

Final “No-Match” Rule: Bush Administration officials unveiled the final “No-Match” Rule policies which were written to beef-up employer responsibilities concerning the improper use of SSNs and focus on worksite enforcement through an expanded electronic employment verification system. Under the new rule, DHS has expanded what it considers “constructive knowledge,” that an employee has provided a false SSN, and outlines the process that employers must use in responding to “No-Match” letters from the SSA when the employee's SSN does not match their database. Failure to comply can cause the DHS to bring civil and criminal actions against the employer. Conversely, the new rule creates a “safe harbor” provision that would protect employers who attempt to comply with the law. Although the proposals emphasize that employers should not terminate employees who appear to have documentation problems, both employer groups and worker advocates predict the proposals could result in mass firings and widespread discrimination. The AFL-CIO and the ACLU have sued the DHS over the “No-Match” rule. See the FCA's website: www.finishingcontractors.org for a summary of the new rule. In addition to issuing the “No-Match” rule, DHS also announced that it is planning to issue a proposed rule requiring all federal contractors to participate in the agency's electronic employment verification system, now called “E-Verify” (no longer “Basic Pilot”).

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S.1639: Unaccompanied Alien Child Protection Act of 2007 (Sen. Kennedy [D-MA] and Sen. Arlen Specter [R-PA])—would provide for comprehensive immigration reform. It's the old version of S.1348, with amendments, plus increased funding for border security. **Status:** Cloture on the bill was not invoked in the Senate.

S.1984: Immigration Enforcement and Border Security Act of 2007 (Sen. Jon Kyl [R-AZ])—would strengthen border security and immigration enforcement by setting forth border control, interior enforcement, and worksite enforcement provisions. **Status:** Referred to the Senate Finance Committee.

TERRORISM INSURANCE COVERAGE

Federal Terrorism Insurance Coverage Extension Advances—legislation (H.R.2761) to extend the federal insurance “backstop” for terrorism-related claims for 10 years continues to move in the House. The Federal program was established in 2002, renewed in 2005, and is scheduled to expire after 2007 unless Congress extends it. Extending the act is considered essential for commercial development and economic vibrancy, especially in urban areas considered to be at high risk for potential terrorist attacks.

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H.R.2761: Terrorism Risk Insurance Revision and Extension Act of 2007 (Rep. Barney Frank [D-MA])—would extend the Terrorism Risk Insurance Act (TRIA) for 10 years with current copayments and deductibles for conventional terrorism acts; expand TRIA’s “make available” requirement to include NBCR coverage; change TRIA’s definition of terrorism to include acts of domestic terrorism; set the program trigger at \$50M; add group life insurance to the lines of insurance for which terrorism coverage must be made available; decrease deductibles and triggers for areas previously impacted by a significant terrorist act; and continue to require studies of the development of a private market for terrorism risk insurance. **Status:** The House Committee on Financial Services approved H.R.2761, but with an amendment that authorized a 15-year extension. The bill will most likely move to the full House to be voted on early in September. **FCA Position:** The FCA supports this legislation.

DAVIS-BACON/PREVAILING WAGE/PLA LANGUAGE

Union Industry Seeks Approval of Bills with Prevailing Wage/PLA Language—particularly during the Bush Administration, labor and management monitor bills to ensure they contain Davis-Bacon provisions and prevailing wage/PLA language. For example, two **federal** energy bills were recently approved by the House with Davis-Bacon provisions (H.R.2776: The Renewable Energy and Energy Conservation Tax Act (Rep. Charles Rangel [D-NY]) and H.R.3221: The New Direction for Energy Independence, National Security, and Consumer Protection (Rep. Nancy Pelosi [D-CA]). These bills would require the payment of federal prevailing wages. The Administration strongly opposes these provisions in both bills that would expand the application of Davis-Bacon prevailing wage requirements. In addition, S.1642: Higher Education Amendments of 2007 (Sen. Ted Kennedy [D-MA]) contained Davis-Bacon provisions. On the other hand, S.1644: Department of Homeland Security Appropriations Act, 2008 (Sen. Robert Byrd [D-WV]) lacked Davis-Bacon contractor mandates; however, the House version, H.R.2638 (Rep. David Price [D-NC]) included such mandates. As expected, the President threatened to veto the House’s version. At the **state** level, the Ohio School facilities Commission adopted a “model responsible bidder” resolution (Resolution 07-98) allowing the use of PLAs and prevailing wages on public education construction projects. For the full text of the model bidder resolution, see http://www.osfc.state.oh.us/pdfs/Resolution_07-98.pdf.

FEDERAL CONSTRUCTION CONTRACTING REFORM

Industry Seeks Suspensions and Debarments for Unscrupulous Contractors—the U.S. is the largest consumer in the world, investing over \$419B in goods and services annually and another \$400B in grants. Yet, the Federal government’s watchdogs (i.e., the Federal suspension and debarment officials), currently lack the information they need to protect our business interests. While the government has a number of separate information systems (e.g., the Past Performance Information Retrieval System, the Excluded Parties List System, the Central Contracting Registration, the Federal Procurement Data System, and the Federal Assistance Award Data System), there is currently no centralized comprehensive government database for contracting officers or debarment officials to access to track the record of contractors before purchases and awards are made. This flawed system allows Federal contractors to repeatedly violate Federal law, yet still receive millions of dollars from the Federal government. In a time of gaping Federal budget deficits and corporate accounting scandals, isn’t it wise to have a full accounting of the Federal government’s investments and spending?

Working with our partners in the Campaign for Quality Construction Alliance, the FCA has been seeking to have legislation passed that would strengthen the accountability of the government-wide suspension and debarment system, mainly its ability to take action against unscrupulous contractors. As in previous attempts, Rep. Carolyn Maloney (D-NY) has been an avid supporter of our efforts. She has once again agreed to sponsor a bill (H.R.3033) that would try to rid the system of these contractors who give a “black eye” to our industry and cheat the taxpayers without impunity. Her proposed legislation calls for the General Services Administration (GSA) to establish and maintain a centralized database of information regarding the integrity and performance of Federal contracts and assistance recipients for use by Federal contracting officers and debarment officials who deal with Federal contracts or assistance.

Also, under her proposed bill a person shall be presumed non-responsible with respect to a Federal contract or assistance award if a judgment or conviction for the same offense, or similar offenses, has been rendered against that person twice within any 3-year period, if each conviction constitutes a cause for debarment under the government-wide debarment system. In addition, when applying for any Federal contract or assistance, whether by submitting a proposal, solicitation, bid, or other offer, a person shall disclose in writing all:

- Federal or State suspensions or debarments from contracts or assistance in the 5-year period preceding the application;
- suspension and debarment show cause orders with respect to Federal contracts or assistance that the person is implementing within 5 years after the date of the application;
- civil, criminal, and administrative proceedings by the Federal Government or any State that occurred in the 5-year period preceding the date of the application;
- administrative, civil, and criminal settlements, agreements, consent decrees, enforcement actions, corrective actions, compelling reason waivers, and other like judgments, orders, decisions, and final dispositions with respect to Federal contracts or assistance implemented within 5 years after the date of the application; and
- Federal contracts and assistance awarded that were terminated due to default in the 5-year period preceding the date of the application.

The Senate side is also working with us to introduce proposed legislation (a draft entitled the Good Government Contractor Act of 2007). This bill would repeal the 3% withholding tax provision and, at the same time, keep all prospective Federal contractors (not just construction) from procuring Federal contracts if they have any tax debts. This legislation will not only repeal Section 511 of P.L. 109-222 (the Tax Increase Prevention and Reconciliation Act), but also serve to reform the procurement process by preventing the Federal government from doing business with any contractor owing tax money to the Federal government. Also, this bill would:

- amend FAR so that any prospective contractor with tax debt could not be deemed responsible or eligible for Federal contracts,
- require the Civilian Acquisition Council and Defense Regulation Council to finalize the proposed rule on Tax Delinquency Certifications and Representations,
- amend the National Tax Lien Filing System and create a Federal Tax Conviction Database, requiring contracting officers to verify information provided by prospective contractors about tax delinquencies, and
- amend FAR so that (a) making false statements regarding tax information, (b) incurring a tax debt, and (c) having a tax conviction or civil judgment for tax evasion(s) would be cause for debarment and suspension.

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H.R.3033: Contractors and Federal Spending Accountability Act of 2007 (Rep. Carolyn Maloney [D-NY])—would improve the Federal agency awards and oversight of contracts and assistance, as well as strengthen the accountability of the government-wide suspension and debarment system. **Status:** Referred to the House Committee on Oversight and Government Reform. **FCA Position:** The FCA supports this legislation.