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## Termination

### **Government Contractors Should Prepare For More Terminations, Attorney Tells BNA**

**C**ontract terminations will become a grim fact of life in the coming era of supercommittees and sequestration, Angela Styles, a Crowell & Moring partner and chair of the firm's Government Contracts Group, told FCR in a candid interview.

Terminations are predicted to rise as a congressional joint deficit reduction committee struggles to comply with the Budget Control Act by finding a way to cut the deficit by \$1.5 trillion over 10 years. If the select committee fails to achieve at least \$1.2 trillion in savings, or spending legislation otherwise is not enacted, the act triggers an automatic sequestration process to cut spending across the board by \$1.2 trillion over nine years beginning in fiscal year 2013.

Styles advises attorneys to learn as much as they can about the budget-cutting process and how sequestration works.

***BNA: Why do you think contract terminations will rise, and when will this happen?***

Styles: Terminations will have to rise. If you're talking about \$100 billion in cuts next year at DOD, you have to terminate contracts and programs. There's no other way to find the money, and they have to make the cuts by Oct. 1.

***What industries will be most affected and why?***

I think it's going to be the defense and security industries, and I'm concerned it will be research and development as well. People don't understand the need to develop a new generation of weapons to stay ahead. It's not the Cold War anymore, so it's hard to explain to people. It's like NASA—people look at dollars and ask why do we have people on the space station?

***How should attorneys handle contract terminations due to budget cuts?***

Being well informed on the debt ceiling process and sequestration is really important. There isn't a lot of clear discussion on what sequestration is in the *Wall Street Journal*, so it's important to tell clients how the process works so they can at least prepare.

There's a good report from the [Government Accountability Office] on the effects of sequestration on the IRS in 1990. ["Effects of the Fiscal Year 1990 Sequestration on the Internal Revenue Service," July 1990-GAO/GGD-90-101FS, <http://archive.gao.gov/d23t8/142087.pdf>]. I got from the report that sequestration is a sledgehammer, a way to reduce spending that is not very thoughtful and does not help agencies rationally

think through how to cut money. It probably hurt the mission and cost more money in the long run. If you really care about how federal agencies perform, it's more thoughtful to cut underperforming programs. Sequestration seems chaotic and isn't great for an agency's mission.

***What do you think will be first thing on the chopping block at the Department of Defense?***

An easy thing to terminate is research and development. What could be worse for our future? It's making short-term choices with significant long-term ramifications. Also look for things that are short-term, like training and travel. They're easier to cut. In terms of programs, you might need a plane in production, but you may not need 20; you may get 10. It's hard to know exactly what they're thinking, though. What's easiest and hurts less? At this point, it's true speculation.

***How are you preparing your clients for major cuts like this?***

We're trying to make sure they know how the process will work. There were few who knew much about sequestration when it happened before. We're trying to make sure we can inform them about what's going on so they know how to handle terminations—how the process works and how they can recover money the government still owes them.

***What should attorneys know about the debt ceiling and sequestration process?***

First, understand the ceilings and deadlines the Budget Control Act sets. Second, find out when the supercommittee is going to meet and when substantive committees will provide input. That gives you insight as to where cuts will take place for your clients.

Also, follow the process. If the supercommittee doesn't meet its deadlines, sequestration will happen. Have insight as to how sequestration occurs for clients; it's a lot of money. Have a sense of what the likely targets are. From a legal perspective, what do you do when the government tells your client we will have to terminate your contract for convenience? Clarify what your costs are and what you can claim.

***What can we learn from previous sequestrations?***

They're chaotic and are not always well thought out. Rather than cutting underperforming programs, it might be easier for an agency to cut your contract or someone else's contract or an employee. Situations are not as rational as you would hope. It's hard on the government workforce, too. They have no choice here—they have to make cuts and are in a tough position.

***Will law firms see much of an increase in business as a result of cancelled contracts?***

Not necessarily. If you go back and look at deficit cuts of the 1990s, firms declined along with their cli-

ents. What's different now is that companies are much more diversified. It's not just large defense companies; it's a lot broader than it used to be.

I think companies have to be cautious on the legal end. We'll see an increase for a period of time, but over the longer term, I'm not sure. If companies expect to lose a lot of money through sequestration, they will cut their legal budgets. If they're looking to the future and

see their contracts cut, they will be cautious on their legal costs.

***Your firm is planning two webinars related to these issues for September. What topics will you cover?***

The first webinar will explain the Budget Control Act and what the supercommittee is doing and where likely cuts will come from. The second will talk about termination for convenience and what you should be thinking about from a legal perspective.