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Improving Economy and Efficiency in Federal Contracting

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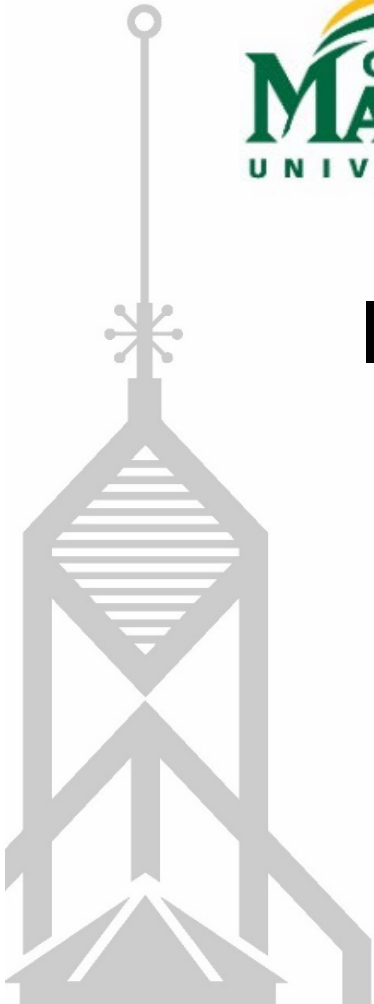


Center for
Government Contracting
SCHOOL OF BUSINESS

Improving Economy and Efficiency in Federal Contracting

Presidential Use of the Federal Property
and Administrative Services to
Direct Procurement Policy

Emily Murphy, Senior Fellow
May 11, 2022



Research Question:

This paper will analyze the use of FPASA authorities in Executive Orders across administrations from both an historical and substantive perspective to examine the effect of these policies on the health of the procurement system.

While it will neither denounce or endorse any particular order, it will examine the legal parameters applicable to FPASA orders as derived from judicial challenges to these orders.

Next, it will survey the modern use of FPASA under Presidents William Clinton, George W. Bush, Barack Obama, Donald Trump, and Joseph Biden to explore the frequency and the subjects of FPASA orders, and the interplay between orders issued during these administrations, and how Congress has responded to FPASA orders.

Finally, it will explore the effects on the industrial base and acquisition workforce.

Federal Property and Administrative Services Act of 1949

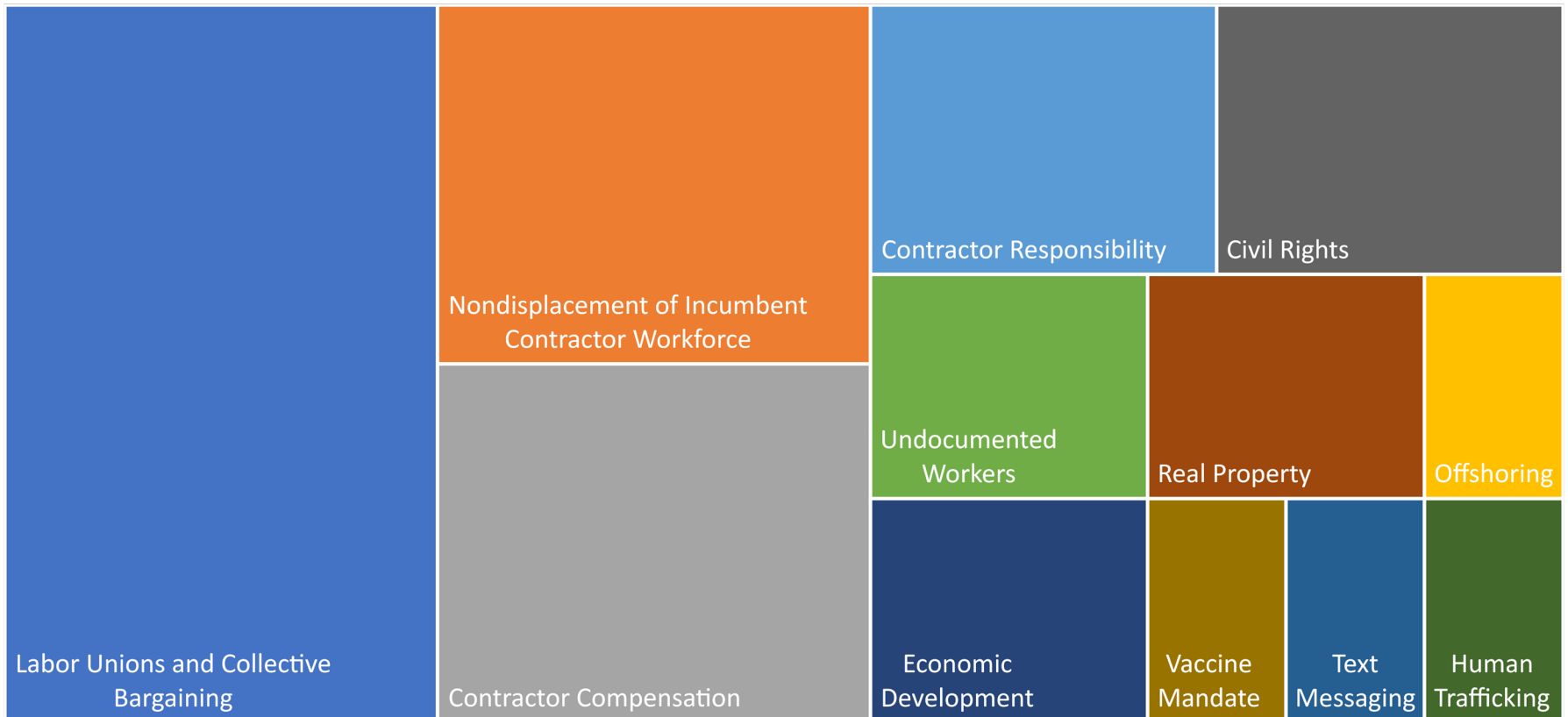
- The statute expresses Congress’s intent to “provide for the Government an economical and efficient system for (a) the procurement and supply of personal property and nonpersonal services” (40. U.S.C. § 471).
- Grants the President broad authority to “prescribe such policies and directives, not inconsistent with the provisions of this Act, as he shall deem necessary to effectuate the provisions of this Act” which “shall govern the . . . executive agencies in carrying out their respective functions hereunder.” (Section 205(a))
- This gives the President enormous authority to enact policies to deliver that “economical and efficient system.”

Frequency of FPASA Use by President

President	Total Executive Orders	Average Executive Orders per Month	Total FPASA Orders	FPASA Orders as a Percentage of EO	Average FPASA Orders per Month
Clinton	364	3.7917	5	1%	0.0521
Bush	291	3.0313	6	2%	0.0625
Obama	276	2.8750	12	4%	0.125
Trump	220	4.5833	6	3%	0.125
Biden	87	6.2143	6	7%	0.4286

FPASA Orders by Topic

- Labor Unions and Collective Bargaining
- Contractor Compensation
- Contractor Responsibility
- Economic Development
- Civil Rights
- Text Messaging
- Nondisplacement of Incumbent Contractor Workforce
- Offshoring
- Undocumented Workers
- Real Property
- Vaccine Mandate
- Human Trafficking



Method of Disposition of FPASA Orders by Topic

Topic	Total Issued	In Effect	In Effect Signed Pre-2021	% Revoke d by E.O.	Courts	Cong. Review Act
Labor Unions and Collective Bargaining	10	40%	30%	40%	10%	0%
Nondisplacement of Incumbent Contractor Workforce	5	20%	0%	80%	0%	0%
Contractor Compensation	5	60%	20%	20%	0%	0%
Offshoring	1	100%	100%	0%	0%	0%
Contractor Responsibility	3	33%	33%	33%	67%	67%
Undocumented Workers	2	100%	100%	0%	0%	0%
Economic Development	2	100%	100%	0%	0%	0%
Real Property	2	100%	100%	0%	0%	0%
Civil Rights	3	67%	33%	33%	33%	0%
Vaccine Mandate	1	0%	0%	0%	100%	0%
Text Messaging	1	100%	100%	0%	0%	0%
Human Trafficking	1	100%	100%	0%	0%	0%

Judicial Response to FPASA Orders

1. AFL-CIO v. Kahn -
2. Chamber of Commerce of the United States v. Reich
3. Contractor Vaccine Mandate cases

Conclusion and Recommendations

What do FPASA trends tell us?

Economy and efficiency are nebulous concepts

Certain orders will be reversed with each presidency

FPASA is becoming the easy button

Two Suggestions

1. Congress should require that any Executive Order relying on FPASA do so explicitly.
2. Congress should require that any new FPASA Executive Order provide explicit and measurable goals for increased economy and efficiency, and then task an entity such as the Office of Federal Procurement Policy with publicly reporting the results on an annual basis.

Questions



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