



NEWSLETTER

December 2022

Draft CMMC Assessment Process is Released, Providing Insights but Attracting Industry Criticism

By: Roger Abbott, Jeremy Scholtes, and Lauren Fleming, Miles & Stockbridge PC (pictured in order below)



The challenge posed to Department of Defense (DOD) contractors of complying with ever-shifting cybersecurity regulations and guidance continues unabated. On July 26, 2022, the Cyber Accreditation Body (Cyber AB) published a highly anticipated “Pre-Decisional Draft V1.0” of the Cybersecurity Maturity Model Certification (CMMC) Assessment Process ([Draft CAP](#)), which provides the procedures and guidance for CMMC Third-Party Assessment Organizations (C3PAOs) conducting official CMMC third-party assessments of organizations seeking certification (OSCs). The Cyber AB, formerly known as the CMMC Accreditation Body, is the non-governmental partner of the DOD that has been charged with authorizing and accrediting the CMMC Third-Party Assessment Organizations (C3PAOs) that conduct CMMC Assessments of companies within the Defense Industrial Base (DIB). As outlined in DOD’s [Notice of Proposed Rulemaking](#) under CMMC version 2.0, the requirement to obtain third party certification will apply to “prioritized acquisitions” that require CMMC Level 2 certification.

The Draft CAP has provoked widespread criticism in both the trade press and in formal comments regarding the complexity and rigidity of the draft assessment process (and attendant costs to contractors), the Draft CAP’s treatment of cloud service providers, its failure to address issues of significance for companies such as practice inheritance, as well as the timing of its release.

This criticism underscores the DIB community’s frustration with the slow rollout and lingering cloud of uncertainty regarding the implementation. The twists and turns along the long road to CMMC implementation – from the initial announcement of CMMC in July 2019, to the issuance of CMMC 1.0 in January 2020, the publication of an Interim Rule in October 2020, further implementation delays and radio silence from DOD throughout most of 2020

and 2021, and the substantial revisions to the framework with the issuance of CMMC 2.0 in November 2021 – are summarized in an [earlier blog post](#) regarding CMMC 2.0.

The Cyber AB Publishes the Draft CAP

As noted above, the Cyber AB published a [Draft CAP](#) on July 26, 2022, which describes the procedures that C3PAOs could conceivably be required to follow in conducting official CMMC Level 2 Assessments and provides guidance about them. However, it bears mentioning that DOD has not endorsed or made any official comment about the Draft CAP. Whereas the DOD Level 2 Scoping Guidance and Guide establish the objectives and criteria for CMMC Level 2 Certification, the Draft CAP “is the CMMC doctrine providing the overarching procedures and guidance for CMMC Third-Party Assessment Organizations (C3PAOs) conducting official CMMC Assessments of organizations seeking CMMC Certification.” The CAP is organized across four phases and describes the required activities to ensure that CMMC Assessments are conducted consistently across the DIB.

- **Phase 1 - Plan and Prepare the Assessment** is very detailed and spans over 15 pages. This phase begins when the OSC engages an accredited C3PAO. Next, the OSC and C3PAO establish roles and responsibilities for each party (including points of contact and responsible parties on each side). Then the terms of the assessment are memorialized in a contract, and the OSC and C3PAO plan out the details of the assessment. Among other things, the OSC must provide the C3PAO the results of the most recent self-assessment, a preliminary list of anticipated evidence, a copy of the company’s SSP and other relevant documentation, and a list of all OSC personnel who play a role in the procedures that are in scope. Next, the C3PAO’s Lead Assessor reviews the adequacy and sufficiency of the information and documentation provided by the OSC and reviews the OSC’s self-assessment. The OSC and C3PAO finalize and sets the schedule for the assessment plan. Finally, the Lead Assessor completes a preliminary assessment and makes a recommendation regarding the practicality of proceeding to the next phase.
- **Phase 2 - Conduct the Assessment** describes an initial assessment kickoff meeting and provides details on the collection and examination of evidence. The Lead Assessor reviews documentation provided by the company, conducts interviews, observes tests, determines whether the company’s external service providers meet the requisite security requirements, and identifies evidence gaps. Next, the Lead Assessor produces a preliminary assessment finding of satisfied (“MET”) or other than satisfied (“NOT MET”). The Assessment Team then scores the company’s practices and validates the preliminary results and records a final recommended score. If the overall score is less than 80% (88/110 practices “MET”), then the OSC will receive a finding of **“Not Achieved”**. If the overall score is greater than 80%, the OSC must correct deficiencies within five business days from the Final Findings Briefing or by an alternative date set by the Lead Assessor. Although CMMC 2.0 allows for limited use of a Plan of Action and Milestones (POA&M) to remediate practices not satisfied at the time of the assessment, the Draft CAP states that the highest-weighted CMMC requirements are not eligible on POA&Ms at the time of the certification assessment and the

OSC must meet 88 of the 110 practices to receive a Level 2 conditional certification.

- **Phase 3 - Report Recommended Assessment Results** includes various procedures and requirements on the submission and uploading information about the assessment into the DoD Enterprise Mission Assurance Support Service (eMASS), as well as the archiving and destruction of assessment documentation.
- **Phase 4 - Close-Out POA&Ms and Assessment** states that the OSC will have 180 days from the Assessment Final Recommended Findings Briefing to select a C3PAO to conduct the POA&M Close-Out Assessment, and provides that certification will be withdrawn if any practices on the POA&M fail to result in a score of MET. The consequences of such a “withdrawal” are unclear—for instance, would a company lose a contract that requires CMMC 2.0 third party certification?

Industry Criticism of the Draft CAP

The Draft CAP outlines an intricate process with multiple assessments at various phases (e.g., including separate preliminary assessments in both Phase 1 and Phase 2). In certain regards, it includes a lot of detail; in others, it provides little information. The Cyber AB left the Draft CAP open to formal comments for 30 days, until August 25, 2022.

Although the Cyber AB has not published the comments it has received at this time, several large contractor trade groups, including the National Defense Industrial Association (NDIA) and the Coalition for Government Procurement (CGP) (see [here](#)), have published the comments they submitted online. The C3PAO Stakeholder Forum, which represents the interests of C3PAOs, also submitted its own comment (available [here](#)). Several criticisms feature prominently:

- **Frontloading of C3PAO Effort in Phase 1 of the Assessment**
Process: Phase 1 of the Draft CAP is extraordinarily detailed, includes a preliminary assessment, and appears to represent one-third or more of total assessment activities. NDIA expressed concern that this may result in OSCs needing to purchase significant “pre-work” services from a C3PAO before the scope and subsequent cost of the assessment can be determined. Phase 1 activities, as drafted, effectively require the formalities of an assessment before the formal assessment. This may result in complex billing arrangements between C3PAOs and OSCs and increase the total cost of assessment. The CGP Comment similarly describes the CAP as “extraordinarily laborious, establishing process and procedure with density of detail that necessarily will make CMMC assessments more expensive, for assessors and assessed companies alike, and longer to accomplish.”

To continue reading this article please go [here](#).

Deadline

12
Dec



Holiday Ornament CONTEST

Buy, make, or refurbish an existing ornament and win a prize! Prizes for Best Holiday TV Classic Theme, Best Holiday, and Best Frederick ornament will be awarded. Ornaments will be auctioned off at the BAFC Holiday party on 12/15 to the highest bidder with ALL proceeds going to CINA.

Drop off ornaments to The Office of Magistrate Julie Minner, Frederick County Circuit Court or to Flynn & Clarke (31 W. Patrick St.) by 3p on 12/12.

*All ornaments will be displayed anonymously for voting.

SECTION/COMMITTEE UPDATES

Young Lawyers Section

The **Young Lawyers Section** is pleased to announce that its Up and Coming Lawyer Award will now be called the **Stephen LeRoux Memorial Award** for

Outstanding Young Lawyer. This award is bestowed on a young lawyer (under the age of 40 before the beginning of the bar year OR admitted to the Bar of the Court of Appeals for less than five years regardless of age) who exemplifies a broad range of high achievement, innovation, vision, leadership, and service to the legal community and the Frederick County Community at large.

Each year the Young Lawyers Section also recognizes a member of the BAFC with the **YLS Mentorship Award**. This award recognizes a member who exemplifies the following criteria in his/her service in the Frederick County legal community:

- 1) Serves as a role model to young lawyers in the community;
- 2) Fosters the development of young lawyers;
- 3) Demonstrates significant interest in contributing to the advancement of younger members of the legal profession.

The YLS will be **accepting nominations for both of the above awards until Friday, December 2nd, 11:59pm.** *Please note: Any BAFC member may nominate and vote for someone for the Stephen LeRoux Memorial award. Only YLS members may submit nominations and vote on the Mentorship award.* To submit a nomination please send an email with the **Award Name, lawyers name and a brief description of why you feel they are deserving of the award** to the YLS at bafcyls@gmail.com. Voting will open and details will be distributed on Monday, Dec. 5, 2022. The recipients of both awards will be announced at the BAFC Holiday Party on Dec. 15, 2022.

For more information about the Young Lawyers Section, please email bafcyls@gmail.com.



The Bar Association of Frederick County

is going classic this Holiday Season....



Holiday Television Classics Party

Thursday, December 15, 2022, 5-8p

Tenth Ward Distilling Company's Whisky Hall

55 E. Patrick St, Downtown Frederick

Hors D'Oeuvres
Drinks
Door Prizes
Ornament Contest
& Auction



Multiple Prizes for:

- Best Themed Costume
- Most Festive Costume



Tickets are \$20 each.

Open to BAFC members and their guests 21+.

RSVP by Friday, December 9th at www.frederickbar.org.

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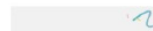
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Janice B. Rockwell, LLC
Attorneys at Law



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Family Law Section

The **Family Law Section's** holiday party will be on **December 8th, from 5-7pm**. It will be at Carin Golze and Alan Winik's office located at 19 N. Court Street, Suite 101, Frederick, Maryland 21701. Section members and their staff are invited. There will be complimentary food and beverages.

For more information about the Family Law Section, please contact Carin Golze at Carin@WinikLaw.com.

Elder, Disability, Trusts and Estates Section

For more information about the Elder, Disability, Trusts and Estates section

please contact Tim Price at tcp@eqlawyers.com.

Business Law Section

For more information about the Business Law Section please contact Rebekah Lusk at rlusk@lusk-law.com.

BAFC Website

NEW MEMBER SPOTLIGHT

Jane Rodgers is a Senior Associate Attorney at Markham Law Firm in Bethesda, Maryland practicing in Maryland and the District of Columbia. Ms. Rodgers practices in all areas of family law, including guardianship and adoption, and she serves as Court-appointed counsel for children in contested custody matters. Prior to entering private practice, Ms. Rodgers was a Judicial Law Clerk to the Honorable John W. Debelius, III at the Montgomery County Circuit Court. Ms. Rodgers received her law degree from The Catholic University of America, Columbus School of Law, Washington, D.C. in May, 2013, and her B.A. Degree from McDaniel College in May, 2008.



RECENT EVENTS

CIVICS & LAW ACADEMY

By: Magistrate Joanie Raymond, Frederick County Circuit Court

The planning committee of Judge Theresa Adams, Colleen Bernard, Ed.D., Ian Bartman, Michelle Dauska and Magistrate Joanie Raymond organized this year's Civics & Law Academy which took place on November 12, 2022 at Frederick High School after a 2-year COVID hiatus. Civics and Law Academy is an opportunity for high school students to learn more about the functioning of government, culture, and society and is a cooperative endeavor between Frederick County Public Schools and the Bar Association of Frederick County.

The day began with a plenary session on careers in the law where the presenters and organizers explained who they are, what they do and how they chose (or ended up in) their profession. This was followed by 2 special interest sessions. The planning committee is so thankful to our amazing presenters: Chief Jason Lando of the Frederick City Police, Officer William Buntley, FCP, Catherine McDermid, Ian Bartman, Detric Kemp, Will Prunka, Teresa Bean, Trevor Addie-Carter, Jacob Craven, April Dixon, Kelly Lynch, Michelle Dauska, Jamie Cannon, Richard Winters and Will Sasse (Alex Hutt was there in spirit) who presented in 8 different sessions.

The students could choose two sessions from two different tracks – the general Law track or the Mock Trial track. The Law track included sessions on Digital Dirt: the case for becoming unplugged; Free Speech, School Speech, and Protected Speech where students learned about constitutional protections for freedom of expression but also the restrictions on speech; Emerging First

Amendment Topics Related to School Law; Criminal Law Practice and Processes (how the criminal justice system really works); and Religion in Schools. The Mock Trial track included classes on Opening Statements and Closing Arguments; Developing Witnesses; the Art of Cross-Examination; and Constructing Direct Examination, Proffering Evidence and Addressing Objections.

After the breakout sessions, the group reconvened for a Q&A with the presenters and an informal round table lunch with groups of students and presenters. The youth asked insightful questions and were engaged with presenters throughout the morning. Great feedback was received both from students and presenters, and everyone is looking forward to the next one.



Photos from top, clockwise: 1) Q & A with the presenters., 2) Detric Kemp and Ian Bartman presenting a session 3) Chief Jason Lando and Officer William Buntley, Frederick City Police, Judge Theresa Adams, and Magistrate Joanie Raymond

ANNUAL BAFC THANKSGIVING DINNER WITH THE SALVATION ARMY

Thank You to all who donated and volunteered for the Annual Thanksgiving Dinner with the Salvation Army on November 22nd. Together we packed up **478 meals** for the residents of Frederick. **Special Thank You** goes out to **Marshall Horman** for organizing and "being the middle man" that helped make the magic happen!



ARTICLES OF INTEREST

Plaintiff's Tip – *Dog Bites – An Owner's Duty When a Dog is Deemed Dangerous*

By: Samantha Manganaro,, Campen & Manganaro

Regarding a personal injury dog bite case, remember If a dog has already been deemed dangerous, it requires a registration, thus the owner has a greater duty to of care. Of course, any invitees to the owner's property must be warned of the danger; the owner is required to post clear warning signs on their property (visible 50 feet away); the dog must be microchipped; and must be muzzled when off the owner's property. The only time the dog is allowed off the owner's property is for medical treatment. See Maryland Criminal Code §10-619(d)(1).

To properly research whether the dog has a history of dog bites and has been deemed dangerous, simply complete a Public Information Act request with the proper County's Division of Animal Control.

Don't let overwhelming piles of medical records turn you into a humbug.

Let the experts at Priority Legal Nurse Consulting handle your medical record review so you have time to spend with family this season.

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Andrew Jezic • Top 10 MD Lawyers, <i>Superlawyers</i> , 2022 • Fellow, American College of Trial Lawyers • Published West co-author, <i>Maryland Law of Confessions</i> • Dozens of acquittals in felony jury trials	David Moyse • <i>Washingtonian</i> Best Lawyers, 2017-2022 • <i>Superlawyers</i> Best Lawyers, Maryland, 2016-2022 • Chair, Montgomery County Criminal Law Section • Handled 50+ jury trials	Tamara Jezic • <i>Washingtonian</i> Best Lawyers, 2015-2022 • Harvard Law School • Lectured around the U.S. on asylum law to immigration lawyers • Several precedent-setting 4th Circuit wins	Himedes Chicas • <i>Washingtonian</i> Best Lawyers, 2017-2022 • Maryland Federal Public Defender's on-call expert consultant • Several precedent-setting BIA and Fourth Circuit decisions

*Each case is different and results do not guarantee a similar outcome.

Criminal Law Personal Injury DUI/DWI	Immigration Family Law Employment	MARYLAND Silver Spring Towson Eastern	VIRGINIA Stafford Fairfax
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Events

- **December 6, 12p: BAFC Monthly Meeting.** Delaplaine Arts Center. Our speaker will be John Edmonds from the Phoenix Foundation. Our sponsor will be Planet Depos.
- **December 8, 5-7p: Family Law Section's Holiday Party.** 19 N. Court Street, Suite 101, (Carin Golze and Alan Winik's office).
- **December 12, 3p: Deadline for BAFC Holiday Ornament Contest.** Drop off at Magistrate Minner's office in the Frederick County Circuit Court or at Flynn & Clarke.
- **December 15, 5-8p: BAFC Holiday Party.** Tenth Ward Distillery's Whisky Hall. RSVP [here](#). Deadline to RSVP is December 9th.

Thank you for supporting
 the **Justice For All Fund** last month:
Ian Bartman

Save the Date

- o **January 3, 12p: BAFC Monthly Meeting.** Delaplaine Arts Center. Our speaker will be a panel of judges & magistrates from the Frederick Circuit and District Courts.
- o **February 6, 9am: Opening Term of Court.** Circuit Courtroom 1.
- o **February 7, 12p: BAFC Annual Meeting** Delaplaine Arts Center. Our speaker will be Shannon Aleshire, CEO of the Mental Health Association of

Frederick County and Planet Depos is our sponsor.

o May 18th: Judges Dinner & 100th Anniversary Celebration. Dutch's Daughter. Details coming soon!

[Full Calendar of Events](#)

Information of Interest

From the Courthouse

Beginning on October 17th the Frederick County Sheriff's Office (FCSO) began training Metropolitan Protective Services, Inc. (MPS) staff members in door security for the Frederick County Courthouse. They anticipate the training to last approximately two weeks. After this training MPS will be staffing the public entrances to the building. This will also allow the Sheriff's Office to increase its presence in courtrooms, common areas and provide more comprehensive coverage throughout the building.

To promote the safety of courthouse employees and visitors and the security of the Court House Complex, Frederick County Government has established procedures for entry into the building and for the issuance of identification badges to employees who work in the Frederick County courthouse complex as well as for bar members.

The lower-level entry point is used for the following groups to gain entry into the building:

- Staff/Employees
- Volunteers, interns, temporary agency employees
- Jury members, ADA, Mail/Deliveries, outside vendor maintenance

All other visitors (including members of the bar) are still required to come through the single access point at the main entrance.

Bar members with a Bar card are required to display that card upon entry at the main entrance screening point. Bar members with a Bar card are subject to random screening at any time. These requirements also apply to employees within the courthouse as well and are standard for anyone entering the building.

For the Frederick County Bar Association cards, members can contact Corporal Hubble (BHubble2@frederickcountymd.gov) or Corporal Merck (BMerck@frederickcountymd.gov) (301) 600-2160 to be issued a card. The FCSO also accepts the new Maryland State Bar Association "Attorney Security Pass" cards. Please note, FCSO reserves the right to suspend a Bar identification card at any time.

[Attached is the 2017 Bar Association Card Security Agreement with the Court](#)



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Maryland Bar Foundation Awards: Call for Nominations

Know someone who deserves recognition? The Maryland Bar Foundation is accepting nominations for its annual award. **The deadline for nominations is Jan. 30, 2023.** The Curran and Legal Excellence awards will be presented at the MSBA's Open Meeting on March 30, 2023. See more information [here](#).

Entry Level Personal Injury Attorney and Law Clerk Positions

Firm with excellent reputation in personal injury and workers' compensation, is seeking candidates to help grow litigation and appellate departments. With offices in Montgomery, Baltimore and Frederick Counties, we are open to entry level attorneys, recent graduates, or 3rd Year law students. We have full-time and part-time positions depending on license status in Maryland. Strong writing skills are a MUST. Looking for team players who are driven and want to make a difference in their communities. Position will provide a substantial amount of hands-on litigation experience. Please submit cover letter, resume and writing sample to: Human Resources, 481 N. Frederick Avenue, Suite 300, Gaithersburg, MD 20877 or email recruiting@bsglaw.com. EOE

Are You Looking for a Paralegal?

If you are in need of a paralegal, Dr. Tracy Parker, Program Manager for Frederick Community College's Paralegal Program, may be able to help. You can reach Dr. Parker at : 301-624-2819, TParker@frederick.edu, To find out more about FCC's Paralegal program visit: <https://www.frederick.edu/programs/business/paralegal.aspx>

We're on Facebook! Follow us at [The Bar Association of Frederick County, MD](#) for updates, reminders, photos, and announcements.

Willing to Take a Pro Bono Case?

The Pro Bono Resource Center has a website called Statewide Opportunities (www.probonomd.org/statewide-opportunities) that shows users a database of pro bono service opportunities, trainings, public interest jobs, etc. around the state. The database can be filtered by county, as well as by specific types of opportunities. For example if you [click here](#), you will see only those opportunities that exist in Frederick County, OR that are statewide, remote, or online.



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