

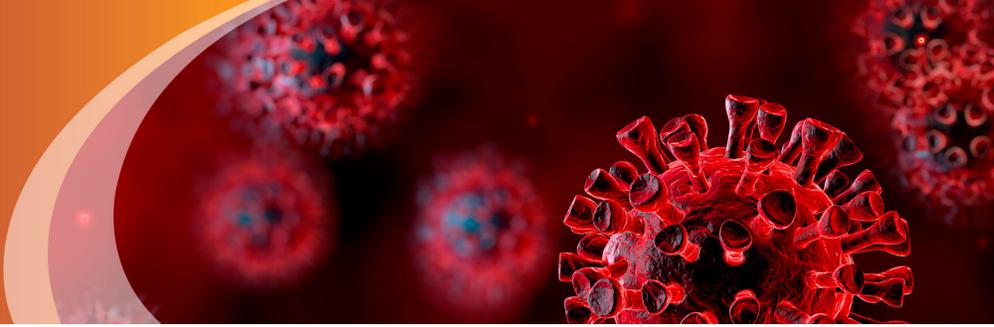
## CARES Act Section 3610 Guidance

Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) permits government agencies to modify the terms of existing contracts or other agreements, without consideration, to reimburse at the minimum applicable contract billing rates not to exceed an average of 40 hours per week for any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a ready state, including to protect the life and safety of Government and contractor personnel.

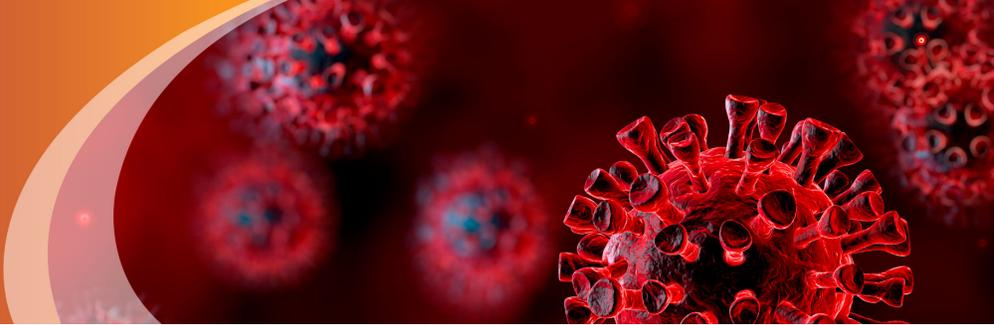
Government agencies have begun to issue guidance on how they will implement Section 3610. Several agencies have moved quickly, and some are issuing guidance on a rolling basis. The amount of actionable detail in that guidance varies by agency. However, what is clear is that any company requesting reimbursement under Section 3610 should maintain adequate documentation; evidence that reimbursement requests meet statutory requirements; and ensure ongoing vigilance to remain in compliance.

Crowell & Moring is tracking the emerging guidance, and is pleased to present the table below, current as of April 12, 2020.

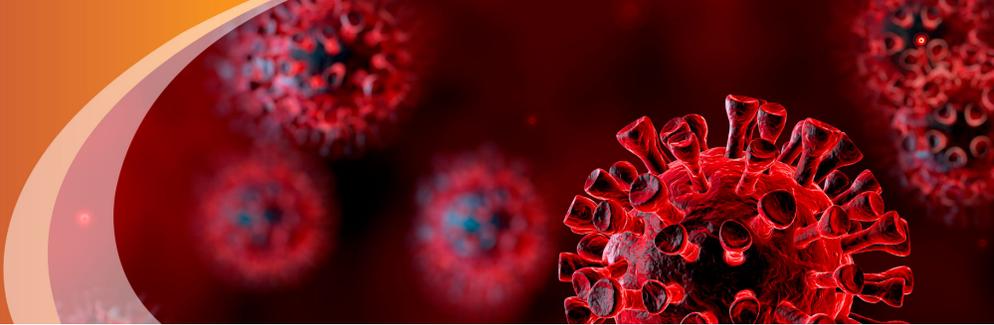
	NRO	ODNI	NSA	DOD
<b>Separate CARES Invoice</b>	Yes	Yes	Yes	Yes
<b>Certification Required?</b>	Yes	N/A	Yes	N/A
<b>What Can Be Billed</b>	<ul style="list-style-type: none"> <li>- Individuals unable to perform at NRO facility due to site closure or restriction</li> <li>- Hours billed at existing rates, fee permitted, will count against existing LOE</li> <li>- Employees</li> </ul>	N/A	<ul style="list-style-type: none"> <li>- Hours paid to individuals where the individual's ability to work was restricted by agency operating status, company's response to protect health and safety of workforce, or on quarantine or</li> </ul>	<ul style="list-style-type: none"> <li>- Any paid leave, including sick leave, that a contractor provides in order to keep its employees or subcontractors in ready state during public health emergency</li> <li>- Lost time not otherwise</li> </ul>



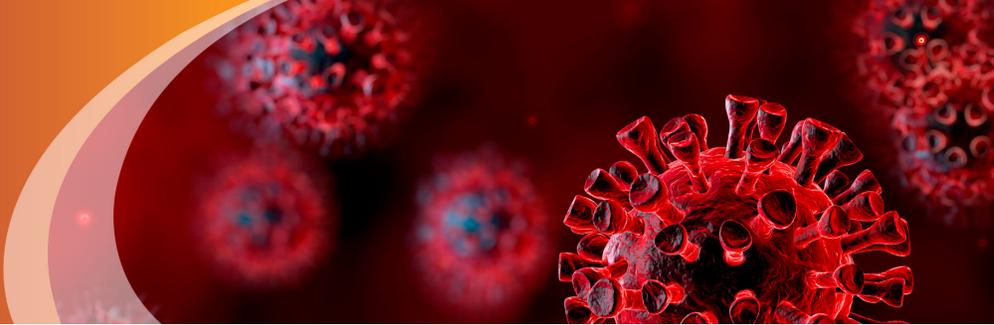
	NRO	ODNI	NSA	DOD
	working/charging indirect may invoice		dealing with COVID-19 illness  -Paid sick leave	reimbursable between 31 Jan and 30 September, includes quarantine, social distancing, and other COVID-19 related interruptions discussed in OMB M-20-18 dated 20 Mar 20  - Contract modifications permitted to allow reimbursement of allowable paid leave costs, not otherwise reimbursable, without additional consideration  - - OTAs qualify  - Child care due to school closures (notes importance of backup info)  - Quarantine time  - Care for others impacted by COVID (notes importance of backup info)



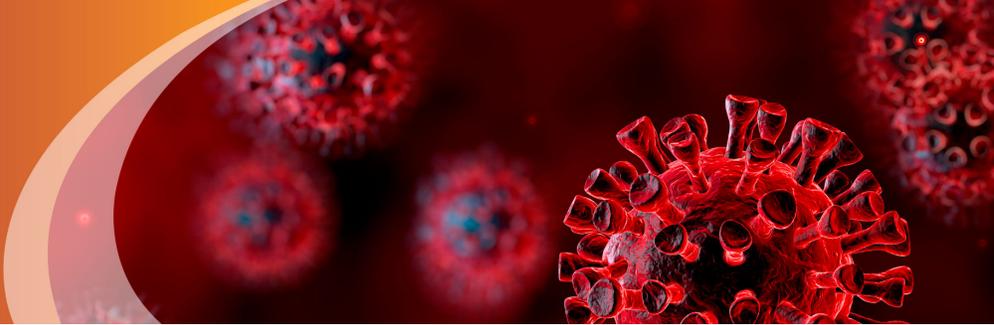
	NRO	ODNI	NSA	DOD
<b>What Can't Be Billed</b>	- Individuals who self-selected out of work		- Personal choice not to work  - non-COVID illness  - Child care issues due to state shutdowns  - Eldercare	- When able to work or be reimbursed by other means
<b>Limitations on Hours</b>	- Average of 40hrs/week, if permitted to bill that much normally	- Average of 40hrs/week  - Each invoice can only show 40hrs/week	- Average of 40hrs/week  - Does not exceed 40hrs/week, including sick or other qualifying leave	- Up to average of 40hrs/week
<b>Rate Guidance</b>	- Normal contract rates	N/A	Multiple guidance points provided, including:  - Minimum rate guidance forthcoming from Acquisition Resource Center  - Minimum rate by location  - May be fully loaded and inclusive of fee	N/A



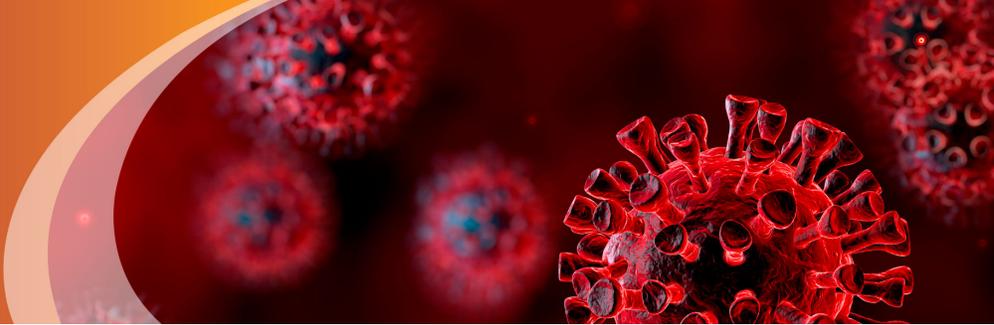
	NRO	ODNI	NSA	DOD
			- Current rate employee billed as of 27 Mar 20	
<b>Other Stimulus Assistance Permitted?</b>	- No double counting  - Div. G of Pub. L. 116-217 expressly mentioned	- Reduce reimbursement by amount of credits/benefits offered elsewhere	- No double counting  - Div. G of Pub. L. 116-217 expressly mentioned  - Other CARES Act assistance expressly mentioned	- No double counting  - Contractor must make representation that they will not pursue and have not pursued reimbursement for the same costs accounted for in their CARES Act requests
<b>FFP Contract Guidance</b>	N/A		- Eligible if delay was due to COVID, otherwise REA	- Contractor requests equitable adjustment, then negotiations on price and delivery schedule to recognize delay  - No increase in profit  - Create line items for CARES invoicing
<b>Incentive Type Contract</b>	N/A	N/A	N/A	Add separate fixed price line item not subject to incentive
<b>T&amp;M Contract Guidance</b>	N/A	N/A	N/A	- Contractor to request REA, then lead to creation of



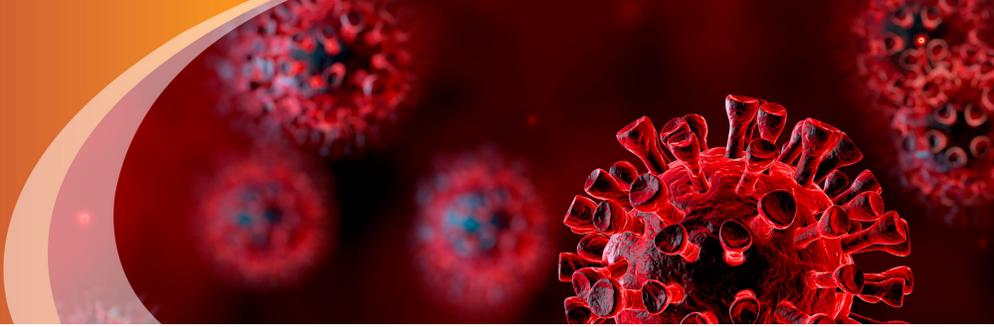
	NRO	ODNI	NSA	DOD
				separate line item
<b>Cost Reimbursement Contract Guidance</b>	N/A	N/A	N/A	- Charge CARES Act reimbursement to separate ODC account, CO and contractor to work together to adjust estimated costs
<b>Interplay with Other Agency Contracts Guidance</b>	N/A	N/A	N/A	- When workforce shared across contracts, government COs need to coordinate on reasonable allocation of costs, ideally through ACO
<b>Work Locations Permitted</b>	<ul style="list-style-type: none"> <li>- NRO facilities expressly mentioned</li> <li>- non-Government controlled facilities unable to perform because they have been closed or made practically inaccessible or inoperable or other restrictions preventing performance as a result of COVID-19, provided that: (a) the stated place of performance in the contract is the</li> </ul>		<ul style="list-style-type: none"> <li>- Government facilities</li> <li>- Authorized contractor facilities</li> <li>- SCIF/non-SCIF that were government approved places of performance</li> </ul>	<ul style="list-style-type: none"> <li>- Place of performance specified in contract, including government-owned, government-leased, contractor-owned, or contractor-leased facilities or sites</li> <li>- Contract administrative services locations</li> <li>- Cleared locations</li> <li>- May include</li> </ul>



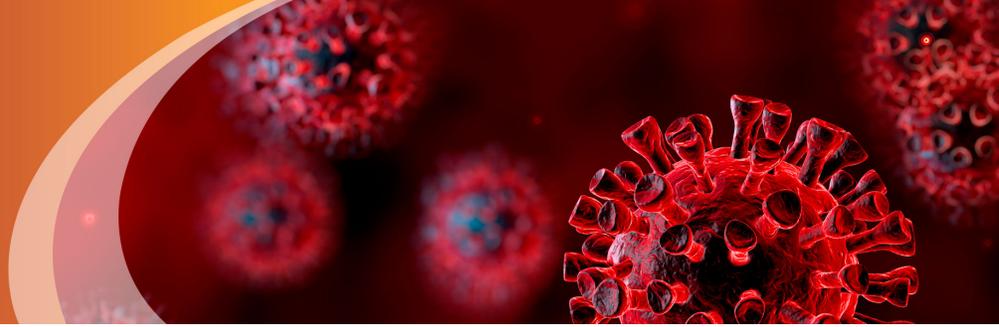
	NRO	ODNI	NSA	DOD
	contractor’s facility; (b) those employees normally charge the contract; (c) the contractor continued to pay those employees while in released status; and (d) employees could not reasonably perform the work via telework because work cannot be performed remotely.			multiple sites
<b>Dates Invoicing Permitted</b>	27 Mar 20 through 30 Sept 20	27 Mar 20 through 30 Sept 20; REA required for time 30 Jan 20 to 27 Mar 20	31 Jan 20 through 30 Sept 20, not anticipating significant charges prior to 18 Mar 20 Code Yellow date  Prior charges addressed through REA.	
<b>Compliance Aspects</b>	<ul style="list-style-type: none"> <li>- Segregate time</li> <li>- OIG record access</li> <li>- Certification</li> <li>- Primes must review and validate</li> </ul>	<ul style="list-style-type: none"> <li>- Segregate time</li> <li>- Labor costs only</li> <li>- Additional costs on contracts requires REA submission</li> </ul>	<ul style="list-style-type: none"> <li>- Segregate time</li> <li>- Labor costs only, other costs/delay addressed through REA</li> <li>- Excel file</li> </ul>	<ul style="list-style-type: none"> <li>- Class Deviation 2020-00013, creates new cost principle, DFARS 213.205-79 CARES Act Section 3610 Implementation</li> <li>- Contractor</li> </ul>



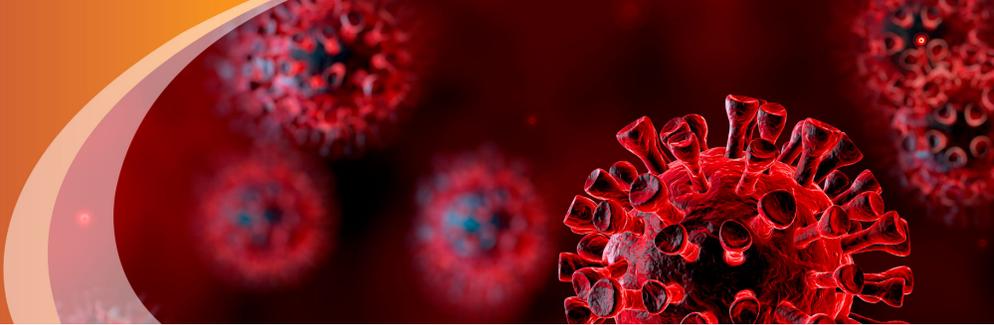
	NRO	ODNI	NSA	DOD
	<p>sub invoices</p> <ul style="list-style-type: none"> <li>- NRO task force oversight</li> <li>- Detailed supplemental information/ narrative per employee</li> </ul>		<p>required to be submitted with invoices</p> <ul style="list-style-type: none"> <li>- Track labor costs in accounting system</li> </ul>	<p>responsible for supporting documentation of any claimed costs, including leave costs for employees</p> <ul style="list-style-type: none"> <li>- Recognizes that leave is usually a part of indirect costs, and this establishes new cost principle to permit recovery of costs. Implies will need to be backed out of indirects.</li> <li>- Contractors must clearly identify the costs reimbursed under Section 3610 and how they were identified, segregated, recorded, invoiced, and reimbursed</li> <li>- Supporting documentation required</li> <li>- If contract type is mixed (e.g., some FFP, some cost, some incentive, etc.), only need to address reimbursement</li> </ul>



	NRO	ODNI	NSA	DOD
				<p>once, preferably in cost-reimbursable manner</p> <ul style="list-style-type: none"> <li>- Contractor responsible for appropriate allocation against individual contracts</li> <li>- If a contract is essential or individuals directed to remain at work, contractor must demonstrate all reasonable efforts made to continue contract performance</li> <li>- CO and contractor to resolve whether to charge CARES direct or indirect by company or business unit. Expresses preference for indirect, unless costs identifiable to a specific contract. Notes importance of DCMA/ACO coordination with more guidance expected.</li> <li>- Charge to newly created cost</li> </ul>



	NRO	ODNI	NSA	DOD
				category Other Direct Costs COVID-19 and allocated based on some reasonable, agreed upon allocation, including possible quarterly indirect cost pools.



## Contacts



David Robbins, Partner  
[drobbins@crowell.com](mailto:d Robbins@crowell.com)  
202.624.2627



Steve McBrady, Partner  
[smcbrady@crowell.com](mailto:smcbrady@crowell.com)  
202.624.2547



Nicole Owren-Wiest, Partner  
[nowrenwiest@crowell.com](mailto:nwrenwiest@crowell.com)  
202.624.2863



Gail Zirkelbach, Partner  
[gzirkelbach@crowell.com](mailto:gzirkelbach@crowell.com)  
213.443.5549