

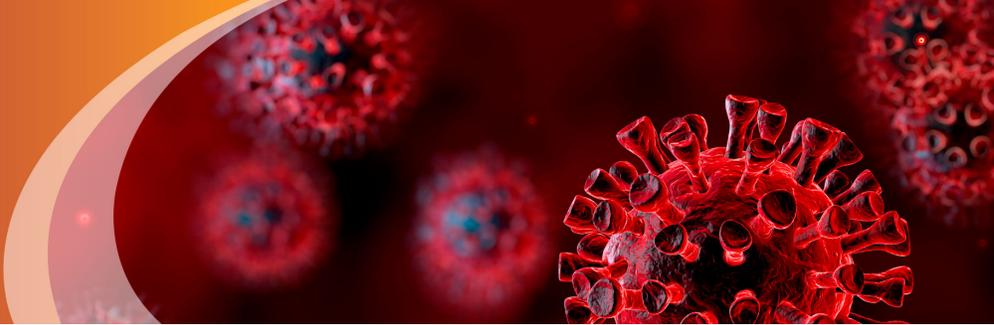
CARES Act Section 3610 Guidance

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.

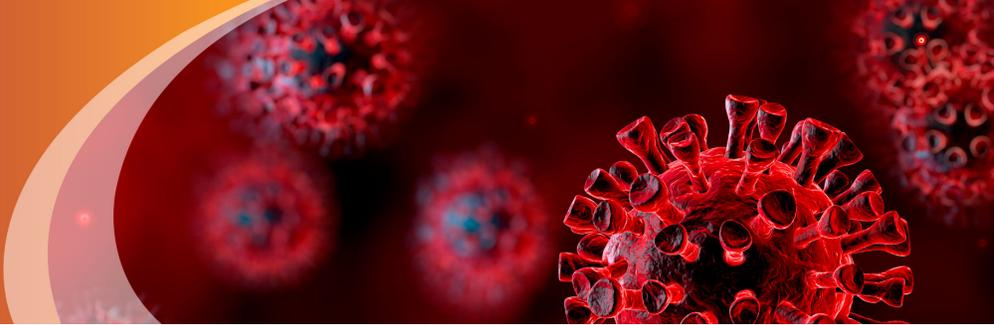
Government agencies have begun to issue guidance on how they will implement Section 3610. Several agencies have moved quickly, and some are issuing guidance on a rolling basis. The amount of actionable detail in that guidance varies by agency. However, what is clear is that any company requesting reimbursement 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 14, 2020.

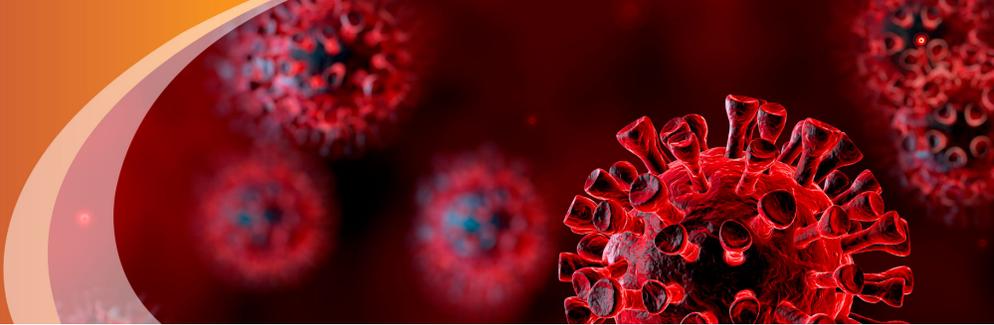
	NRO	ODNI	NSA	DOD	NGA
Separate CARES Invoice	Yes	Yes	Yes	Yes	Yes
Certification Required?	Yes	N/A	Yes	N/A	Yes
What Can Be Billed	<ul style="list-style-type: none"> - Individuals unable to perform at NRO facility due to site closure or restriction - Hours billed at existing rates, fee permitted, will count against existing LOE - Employees 	N/A	<ul style="list-style-type: none"> - 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 	<ul style="list-style-type: none"> - 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 	<ul style="list-style-type: none"> - Time for employees who cannot perform due to facility closure or other restrictions, and where their job duties cannot be performed remotely due to the COVID-19 related public health



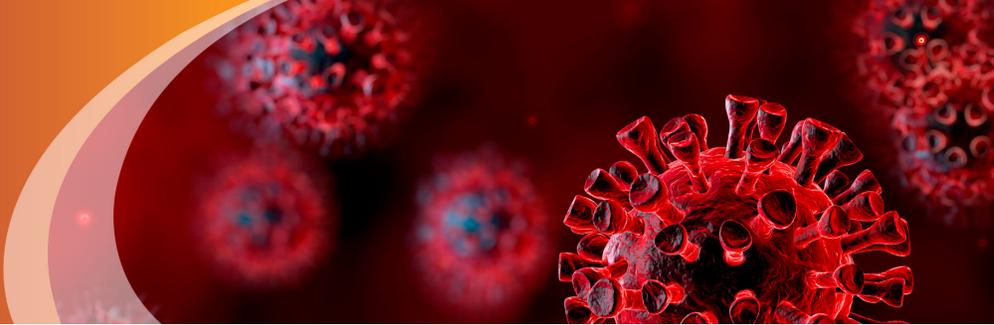
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	working/charging indirect may invoice		<p>workforce, or on quarantine or dealing with COVID-19 illness</p> <p>-Paid sick leave</p>	<p>- Lost time not otherwise reimbursable between 31 Jan and 30 September, includes quarantine, social distancing, and other COVID-19 related interruptions discussed in OMB M-20-18 dated 20 Mar 20</p> <p>- Contract modifications permitted to allow reimbursement of allowable paid leave costs, not otherwise reimbursable, without additional consideration</p> <p>- OTAs qualify</p> <p>- Child care due to school closures (notes importance of backup info)</p> <p>- Quarantine time</p>	<p>emergency.</p> <p>- Lost time, not otherwise reimbursable, if the contractor provides leave to its employees or subcontractor employees to maintain a ready state, including to protect the life and safety of Government and contractor personnel.</p>



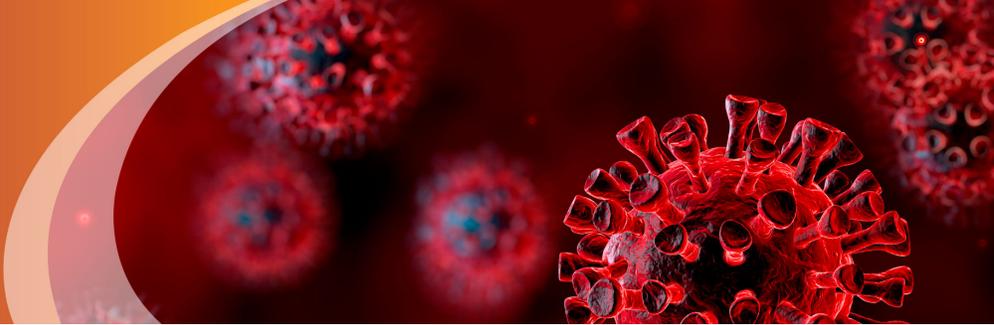
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				- Care for others impacted by COVID (notes importance of backup info)	
What Can't Be Billed	- Individuals who self-selected out of work		- Personal choice not to work - non-COVID illness - Child care issues due to state shutdowns - Eldercare	- When able to work or be reimbursed by other means	- Personal choice not to report to work for fear of catching virus
Limitations on Hours	- 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	- Not to exceed average of 40hrs/week
Rate Guidance	- Normal contract rates	N/A	Multiple guidance points provided, including: - Minimum	N/A	- No minimum, but profit/fee cannot be included in 3610 payments



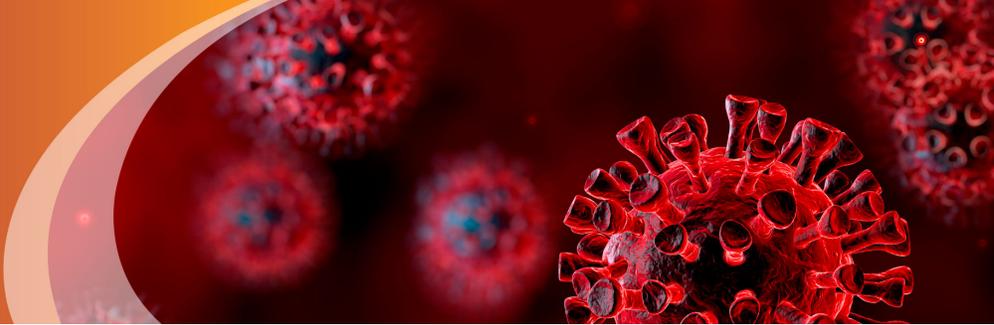
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			rate guidance forthcoming from Acquisition Resource Center - Minimum rate by location - May be fully loaded and inclusive of fee - Current rate employee billed as of 27 Mar 20		
Other Stimulus Assistance Permitted?	- No double counting - Div. G 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	- No double counting - Contractor responsible for identifying any credits that may reduce reimbursement
FFP Contract Guidance	N/A		- Eligible if delay was due to COVID,	- Contractor requests equitable	- FFP completion type contract, if delivery date is



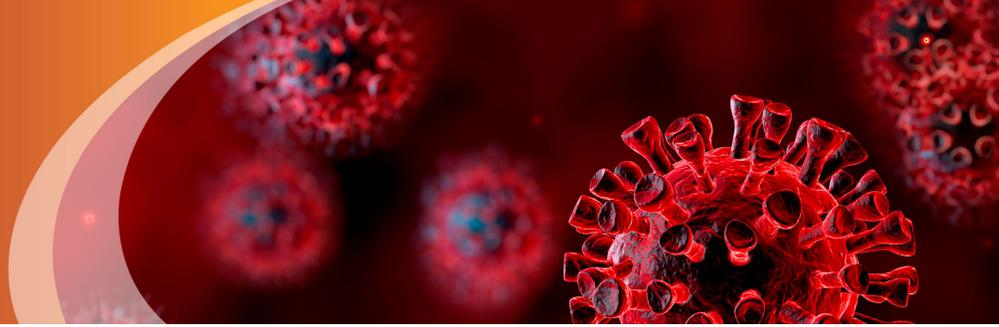
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			otherwise REA	adjustment, then negotiations on price and delivery schedule to recognize delay - No increase in profit - Create line items for CARES invoicing	extended in response to COVID related closures, an REA is required (whether or not costs are subject to CARES Act)
Incentive Type Contract	N/A	N/A	N/A	Add separate fixed price line item not subject to incentive	N/A
T&M Contract Guidance	N/A	N/A	N/A	- Contractor to request REA, then lead to creation of separate line item	N/A
Cost Reimbursement Contract Guidance	N/A	N/A	N/A	- Charge CARES Act reimbursement to separate ODC account, CO and contractor to work together to adjust estimated costs	- If delivery date is extended in response to COVID related closures, an REA is required (whether or not costs are subject to CARES Act)
Interplay with Other Agency Contracts	N/A	N/A	N/A	- When workforce shared across contracts,	N/A



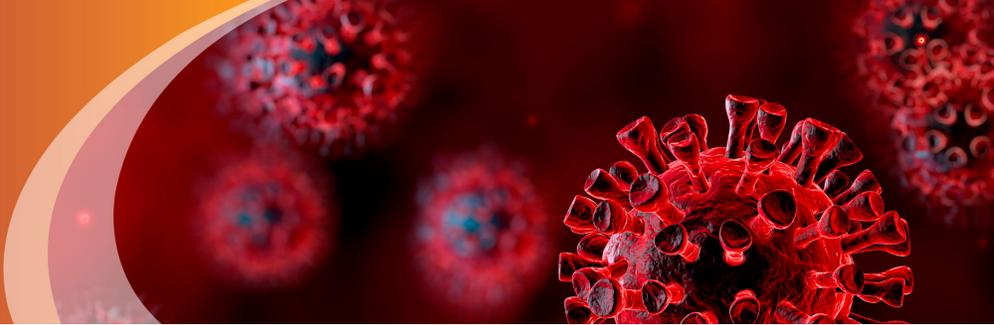
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Guidance				government COs need to coordinate on reasonable allocation of costs, ideally through ACO	
Work Locations Permitted	<ul style="list-style-type: none"> - NRO facilities expressly mentioned - non-Government controlled facilities unable to 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 contractor’s facility; (b) those employees normally charge the contract; (c) the contractor continued to pay those employees while in released 		<ul style="list-style-type: none"> - Government facilities - Authorized contractor facilities - SCIF/non-SCIF that were government approved places of performance 	<ul style="list-style-type: none"> - Place of performance specified in contract, including government-owned, government-leased, contractor-owned, or contractor-leased facilities or sites - Contract administrative services locations - Cleared locations - May include multiple sites 	<ul style="list-style-type: none"> - Government or government-approved site (to include company spaces) where work impacted due to facility closures or other public health restrictions. - Includes any corporate facilities that have been authorized for performance under the applicable contract.



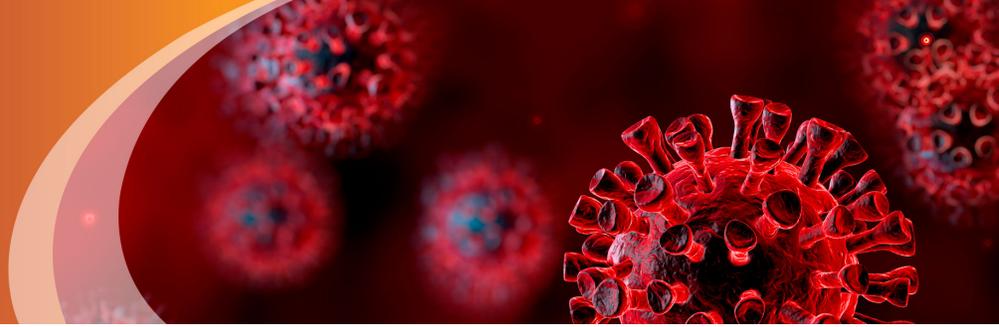
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	status; and (d) employees could not reasonably perform the work via telework because work cannot be performed remotely.				
Dates Invoicing Permitted	27 Mar 20 through 30 Sept 20	27 Mar 20 through 30 Sept 20; REA required for time 30 Jan 20 to 27 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.		21 Mar 20 start date. Any costs prior to that date must be through REA
Compliance Aspects	<ul style="list-style-type: none"> - Segregate time - OIG record access - Certification - Primes must review and validate sub invoices - NRO task force oversight - Detailed 	<ul style="list-style-type: none"> - Segregate time - Labor costs only - Additional costs on contracts requires REA submission 	<ul style="list-style-type: none"> - Segregate time - Labor costs only, other costs/delay addressed through REA - Excel file required to be submitted with invoices - Track labor costs in 	<ul style="list-style-type: none"> - Class Deviation 2020-00013, creates new cost principle, DFARS 213.205-79 CARES Act Section 3610 Implementation - Contractor responsible for supporting documentation of any claimed costs, including leave costs for 	<ul style="list-style-type: none"> - Requests no-cost resolutions of schedule impacts as NGA has not received additional funding. - no-cost schedule extensions first preference. If not possible, modifications for no-cost descopes or partial



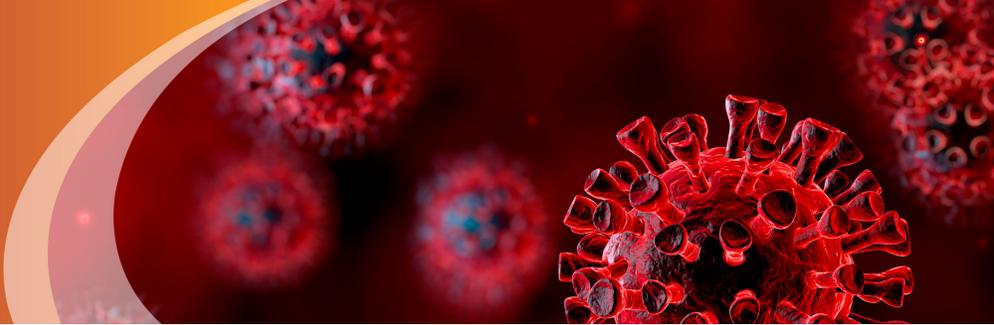
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	<p>supplemental information/narrative per employee</p>		<p>accounting system</p>	<p>employees</p> <ul style="list-style-type: none"> - Recognizes that leave is usually a part of indirect costs, and this establishes new cost principle to permit recovery of costs. Implies will need to be backed out of indirects. - Contractors must clearly identify the costs reimbursed under Section 3610 and how they were identified, segregated, recorded, invoiced, and reimbursed - Supporting documentation required - If contract type is mixed (e.g., some FFP, some cost, some incentive, etc.), only need to address reimbursement once, preferably 	<p>terminations for convenience may be executed.</p> <ul style="list-style-type: none"> - May, under certain circumstances, take training through NGA's Blackboard site as telework time, and submit that time as a CARES Act REA and/or invoice. - Must be able to return to work at an approved government site at the approved start time when notified to return. Individuals unable/unwilling to return to work for reasons other than stipulated in CDC guidance are not considered in a ready state, and contractors may not bill for time that individuals were not in a "ready state." - Retroactive pay



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				<p>in cost-reimbursable manner</p> <ul style="list-style-type: none"> - Contractor responsible for appropriate allocation against individual contracts - If a contract is essential or individuals directed to remain at work, contractor must demonstrate all reasonable efforts made to continue contract performance - 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 	<p>for individuals in leave without pay status may be reimbursed under CARES Act.</p> <ul style="list-style-type: none"> - The CARES invoice shall include detailed backup describing the calculated invoice amount. This shall include a listing of personnel being paid for under the invoice, the number of hours paid per individual, and explanation of why the claimed hours could not be worked, the type of leave (sick or “ready status”) and the loaded hourly rate of the individual.



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				<p>with more guidance expected.</p> <p>- Charge to newly created cost category Other Direct Costs COVID-19 and allocated based on some reasonable, agreed upon allocation, including possible quarterly indirect cost pools.</p>	



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