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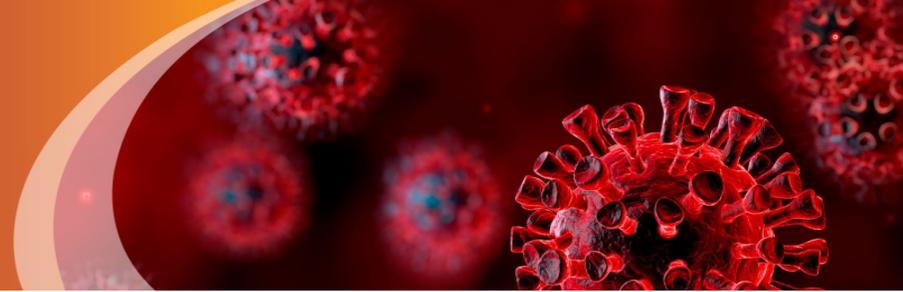
CARES Act Section 3610 Guidance

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.

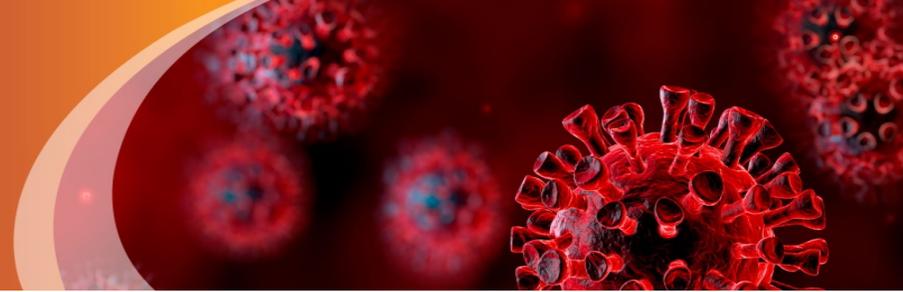
Crowell & Moring is tracking the emerging guidance, and is pleased to present the table below, current as of May 1, 2020.

	NRO	ODNI	NSA	DOD	NGA	GSA	MDA
Separate CARES Invoice	- Yes	- Yes	- Yes	- Yes	- Yes	- Yes	- N/A
Certification Required?	- Yes	- N/A	-Yes	- No, but representations required	- Yes	- No, but representations required	- No, but representations required
What Can Be Billed	- Individuals unable to perform at NRO facility due to site	- N/A	- Hours paid to individuals where the individual's	- Any paid leave, including sick leave, that a contractor	- Time for employees who cannot perform due to facility closure or	- Paid leave for employees or subcontractors "to maintain a ready	- Any paid leave, including sick leave, that a contractor



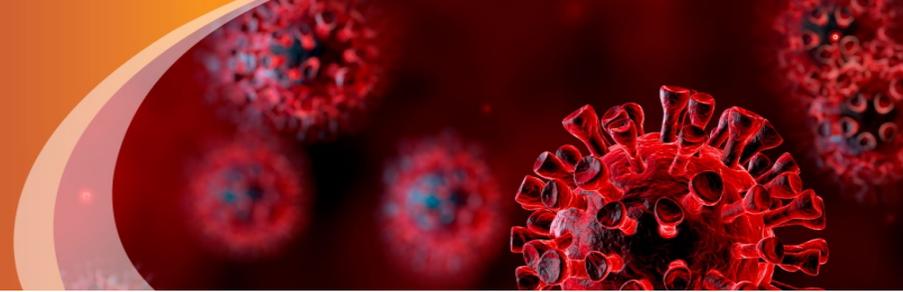
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	<p>closure or restriction</p> <ul style="list-style-type: none"> - Hours billed at existing rates, fee permitted, will count against existing LOE - Employees working/charging indirect may invoice 		<p>ability to work was restricted by agency operating status, company's response to protect health and safety of workforce, or on quarantine or dealing with COVID-19 illness</p> <ul style="list-style-type: none"> - Paid sick leave 	<p>provides in order to keep its employees or subcontractors in ready state during public health emergency</p> <ul style="list-style-type: none"> - 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 - Contract modifications permitted to allow reimbursement of allowable paid 	<p>other restrictions, and where their job duties cannot be performed remotely due to the COVID-19 related public health emergency</p> <ul style="list-style-type: none"> - 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>state, including to protect the life and safety of Government and contractor personnel</p> <ul style="list-style-type: none"> - Only applies to a contractor whose employees 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 emergency 	<p>provides in order to keep its employees or subcontractors in ready state, including to protect the health and safety of Government and contractor personnel during the COVID-19 public health emergency</p>



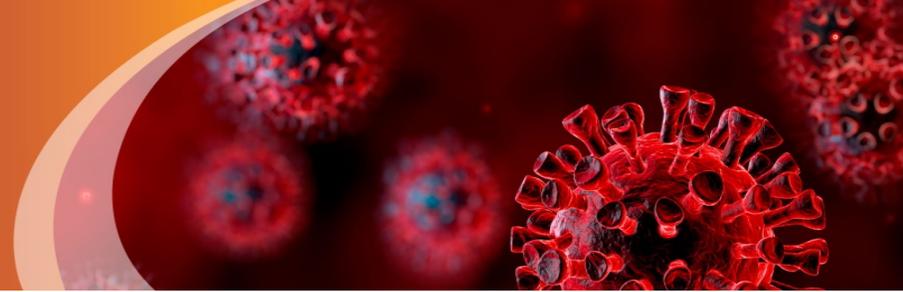
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				leave costs, not otherwise reimbursable, without additional consideration - OTAs qualify - Child care due to school closures (notes importance of backup info) - Quarantine time - Care for others impacted by COVID (notes importance of backup info)			
What Can't Be Billed	- Individuals who self-selected out of work		- Personal choice not to work - Non-COVID illness	- When able to work or be reimbursed by other means	- Personal choice not to report to work for fear of catching virus	- If the work can be performed by telework or other remote means.	



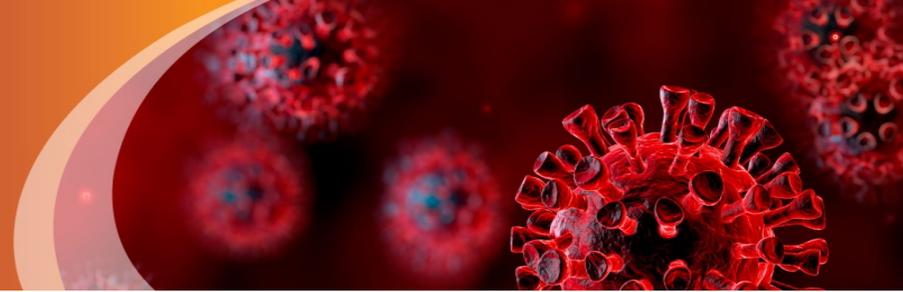
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			<ul style="list-style-type: none"> - Child care issues due to state shutdowns - Eldercare - Hours for employees on leave without pay status (unless contractor agrees to pay those costs retroactively) 				
Limitations on Hours	- Average of 40hrs/week, if permitted to bill that much normally	<ul style="list-style-type: none"> - Average of 40hrs/week - Each invoice can only show 40hrs/week 	<ul style="list-style-type: none"> - 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	- Up to average of 40hrs/week	- Up to average of 40hrs/week



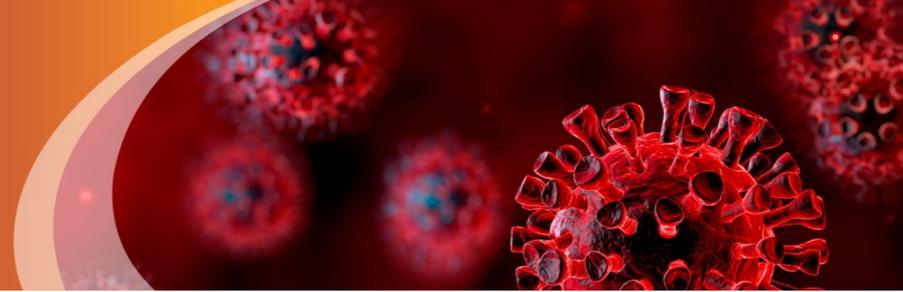
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Rate Guidance	- Normal contract rates	- N/A	<ul style="list-style-type: none"> - Multiple guidance points provided, including: - Minimum rate guidance forthcoming from Acquisition Resource Center - Minimum rate by location - Minimum applicable contract billing rates must exclude fee - Current rate employee billed as of 27 Mar 20 	- No profit or fee	- No minimum, but profit/fee cannot be included in 3610 payments	<ul style="list-style-type: none"> - Lowest contract billing rate for the specific applicable work categories for which reimbursement is requested - No fee or profit, where practicable 	<ul style="list-style-type: none"> - Sum the direct labor cost for each CLIN and apply the indirect rates to calculate total cost (exclusive of profit/fee) - Hourly billing rates must match the negotiated contract rates, if applicable
Other Stimulus Assistance	- No double counting	- Reduce reimbursement by	- No double	- No double	- No double	- No double	- No double



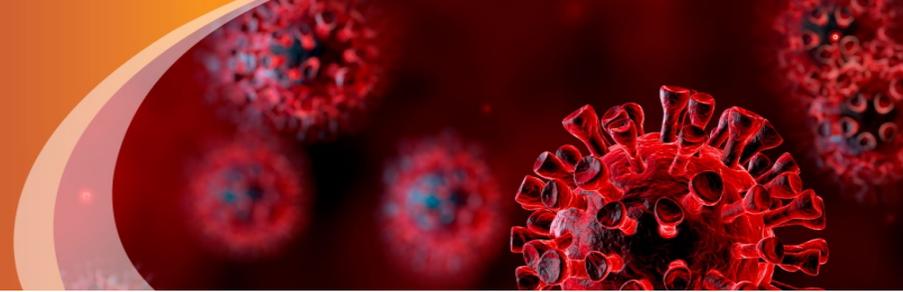
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Permitted?	- Div. G of Pub. L. 116-217 expressly mentioned	amount of credits/benefits offered elsewhere	counting - Div. G of Pub. L. 116-217 expressly mentioned - Other CARES Act assistance expressly mentioned	counting - Contractor must make representation that they will not pursue and have not pursued reimbursement for the same costs accounted for in their CARES Act requests - To the extent that PPP credits are allocable to costs allowed under a contract, the Government should receive a credit or a reduction in billing for any PPP loans or loan payments that are forgiven	counting - Contractor responsible for identifying any credits that may reduce reimbursement	counting - CO and the contractor should discuss applicable credits	counting - Contractor responsible for identifying any credits that may reduce reimbursement and must disclose the amount of compensation (if possible)



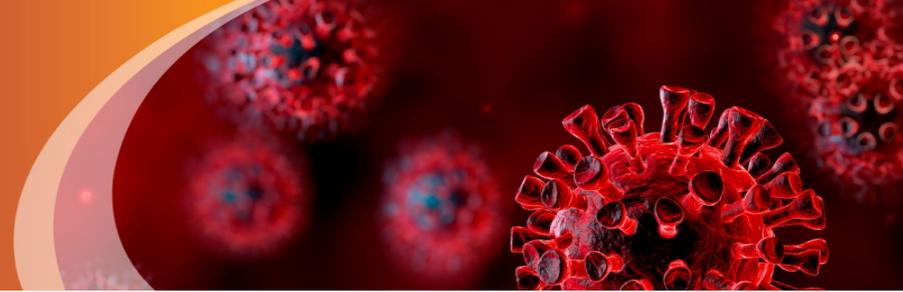
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FFP Contract Guidance	- N/A		- May apply to FFP contracts if the original delivery date cannot be met due to COVID related closures	- Contractor requests equitable adjustment, then negotiations on price and delivery schedule to recognize delay - No increase in profit - Formal modification required - Create line items for CARES invoicing	- FFP completion type contract, if delivery date is extended in response to COVID related closures, an REA is required (whether or not costs are subject to CARES Act)	- Add one or more separate line items	- N/A
Incentive Type Contract	- N/A	- N/A	- N/A	- Add separate fixed price line item not subject to incentive	- N/A	- Add separate fixed price line item not subject to incentive	- N/A
T&M Contract Guidance	- N/A	- N/A	- Minimum applicable T&M contract billing rates must	- Contractor to request REA, then lead to creation of separate line item	- N/A	- Add separate line item - Supporting documentation	- N/A



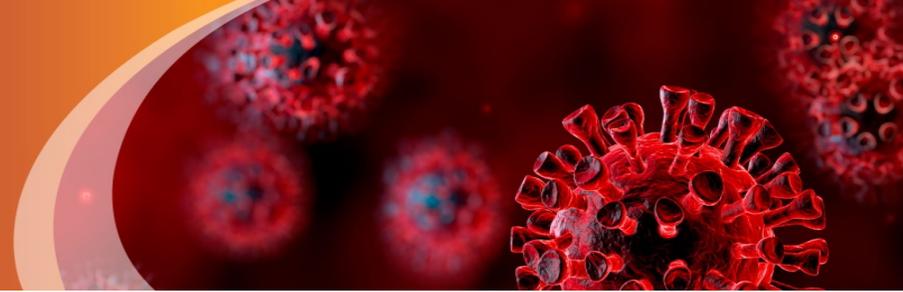
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			exclude fee			must be retained for audit, while interim voucher would be provisionally approved and paid	
Cost Reimbursement Contract Guidance	- N/A	- N/A	<ul style="list-style-type: none"> - May invoice for actual costs that are allowable, allocable, and reasonable and do not exceed existing approval of staffing rate - COVID-19 costs cannot be retroactively added to the fee pool on CPAF contracts 	- 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)	<ul style="list-style-type: none"> - Add separate line item - CO to work with contractor to establish cost procedures - Supporting documentation must be retained for audit, while interim voucher would be provisionally approved and paid 	- N/A
Interplay with Other Agency Contracts	- N/A	- N/A	- N/A	- When workforce shared across contracts,	- N/A	- N/A	- N/A



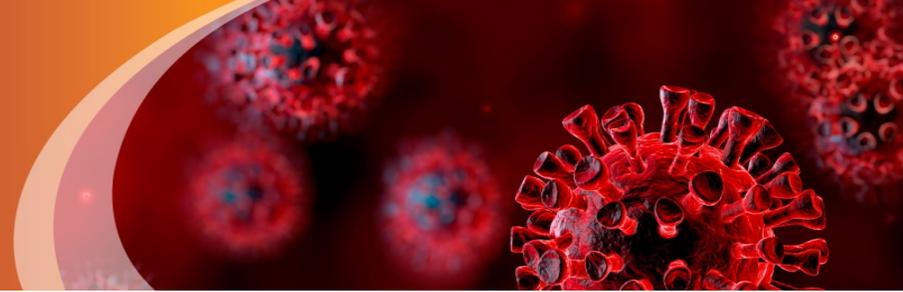
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Guidance				government COs need to coordinate on reasonable allocation of costs, ideally through ACO			
Work Locations Permitted	<ul style="list-style-type: none"> - NRO facilities expressly mentioned - Non-Government controlled facilities unable to 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 		<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 	<ul style="list-style-type: none"> - All contractor and subcontractor work sites are considered approved for purposes of the deviation, except for work sites which the CO identifies specifically in writing as not approved 	<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



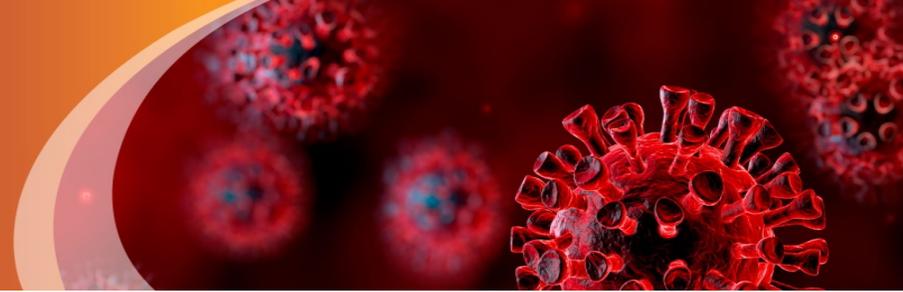
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	normally charge the contract; (c) the contractor continued to pay those employees while in released status; and (d) employees could not reasonably perform the work via telework because work cannot be performed remotely			- Also includes sites outside of the United States (foreign contractors are also eligible)			
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	- 27 Mar 20 through 30 Sept 20, not anticipating significant charges prior to 18 Mar 20 Code Yellow date -Prior charges addressed through REA. -Invoicing may	- 31 Jan 20 through 30 Sept 20	- 21 Mar 20 start date -Any costs prior to that date must be through REA	- 27 Mar 20 through 30 Sept 20	- 31 Jan 20 through 30 Sept 20



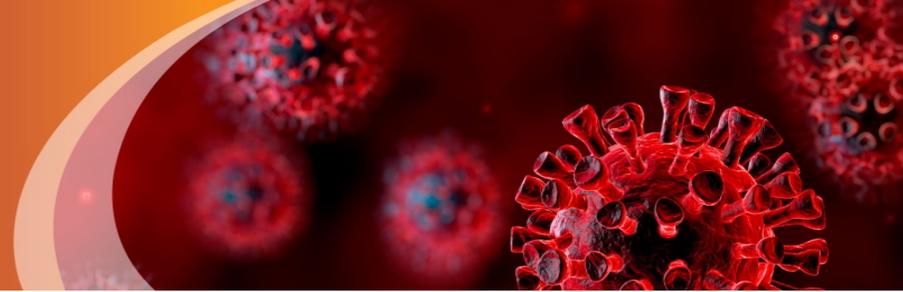
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			begin on 10 April 20				
Compliance Aspects	<ul style="list-style-type: none"> - Segregate time - OIG record access - Certification - Primes must review and validate sub invoices - NRO task force oversight - Detailed supplemental information/narrative per employee 	<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 and Invoice Certification Memo required to be submitted with invoices - Track labor costs in accounting system 	<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 employees - Recognizes that leave is usually a part of indirect costs, and this establishes new cost principle to permit recovery of costs. Implies will 	<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 terminations for convenience may be executed. - May, under certain circumstances, take training through NGA's Blackboard site as telework time, and submit that time as a 	<ul style="list-style-type: none"> - Class Deviation CD-2020-12, creates clause 552.222-70, which applies only to FAR-based contracts. - Contractor initiates the request, and contract modification is require to implement the deviation 	<ul style="list-style-type: none"> - List of contractor and subcontractor employees, by name or employee ID and must provide the labor category, number of hours, hourly direct labor rate, total estimated costs, leave dates, and CLINs for each employee -Authorized costs must be segregated and identifiable in the contractor's records -Segregation and identification of costs can be performed by any



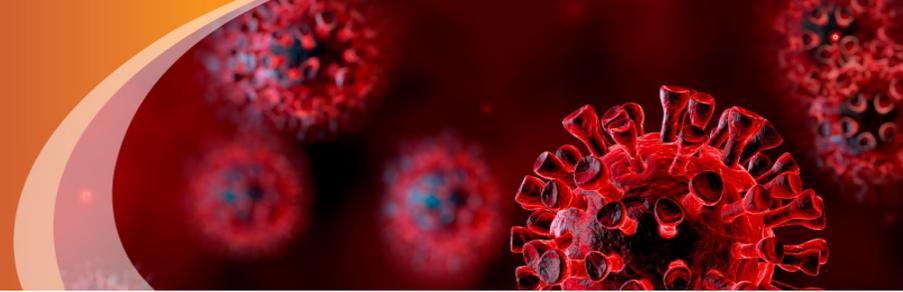
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				<p>need to be backed out of indirects.</p> <ul style="list-style-type: none"> - Contractors must clearly identify the costs reimbursed under Section 3610 and how they were identified, segregated, recorded, invoiced, and reimbursed - Supporting documentation required - If contract type is mixed (e.g., some FFP, some cost, some incentive, etc.), only need to address reimbursement once, preferably in cost-reimbursable manner 	<p>CARES Act REA and/or invoice.</p> <ul style="list-style-type: none"> - 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 for individuals in leave without pay status may be 		<p>reasonable method as long as there is a sufficient audit trail</p>



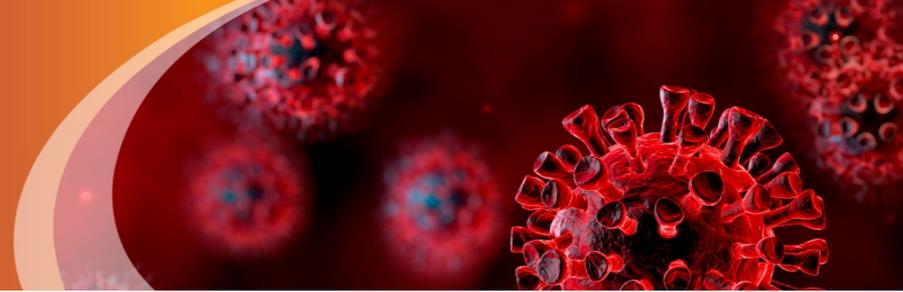
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				<ul style="list-style-type: none"> - Contractor responsible for appropriate allocation against individual contracts - If a contract is essential or individuals directed to remain at work, contractor must demonstrate all reasonable efforts made 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 	<ul style="list-style-type: none"> reimbursed under CARES Act. - 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>costs identifiable to a specific contract. Notes importance of DCMA/ACO coordination 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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