



April 16, 2020

Hon. Russell Vought  
Director (Acting)  
Office of Management and Budget  
Executive Office of the President  
1650 Pennsylvania Ave NW  
Washington, DC 20503

Re: Implementation of Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

Dear Director Vought,

On behalf of the undersigned organizations, we write today to seek clarifying and overarching guidance from the Office of Management and Budget (OMB) on the implementation of Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Section 3610 authorizes agencies to reimburse contractors at minimum applicable contract billing rates for employees who cannot perform work because of Coronavirus Disease 2019 (COVID-19)-related facility closures and other restrictions, and those who cannot telework. Consistent implementation of this provision is critical to the viability of the hundreds of thousands of companies that make up our nation's critical infrastructure and defense industrial base supply chains, and that must retain a ready workforce throughout the COVID-19 national emergency.

Currently, a handful of agencies, including the Department of Defense (DoD) and several intelligence agencies, have published guidance related to the implementation of Sec. 3610. That guidance has established a helpful framework for contracting officers as they seek to be good stewards of taxpayer funds. We applaud these agencies for their quick action to affirm support for federal contractors. They have stood shoulder to shoulder with our nation's military and government personnel to maintain a mission-ready workforce since the public health emergency began January 31, 2020. However, the collective set of agency guidance, issued iteratively and perhaps without the luxury of time for full collaboration, has had the unintentional result of creating the inconsistent or contradictory implementation of Sec. 3610.

Companies require clear and consistent guidance to protect their employees, maintain a ready state, and make critical resource and personnel decisions tied to support for customer missions. **Therefore, we respectfully request that OMB issue implementation guidance to ensure that all federal agencies**

**understand the acquisition tools available and have a consistent approach to ensuring resilience across the total force as our nation weathers this crisis.**

To date, the implementing guidance, class deviation, and frequently asked questions issued by the Department of Defense have been the most comprehensive. We commend the DoD's effort and recommend OMB adopt a similar approach to quickly publishing guidance that specifically states:

- Covered employees include those who cannot perform work on a government-owned, government-leased, contractor-owned, or contractor-leased facility or site approved by the Federal Government for contract performance due to closures or other restrictions. An approved work site includes the contractor's location and any other places of performance specifically identified in the contract, such as any contractor or subcontractor facility at which contract administration services are performed in support of those contracts or that has been cleared by the National Industrial Security Program (NISP) Contract Classification System (NCCS) on a DD form 254 or electronic equivalent. Depending on the contract, it may include multiple work sites and/or locations<sup>1</sup>;
- "Other Restrictions" preventing employees from going to a work site for purposes of Sec. 3610 include COVID-related restrictions such as closures that prohibit performance of work or telework, for public health reasons, or for family care issues<sup>2</sup>;
- The reimbursement applies to costs incurred between January 31 and September 30, 2020;
- The legislative authority applies to primes and subcontractors;
- Covered costs may be a direct or indirect charge to contracts;
- Previously negotiated contract rates should be used; and
- The provisions apply to all contract types and agreements.

We appreciate the DoD's providing of frequently asked questions in conjunction with their class deviation and guidance as well as their commitment to providing additional guidance and clarity around topics as circumstances warrant. This agility and commitment to working together for the good of the total force during these unprecedented times are critical to minimizing disruption to critical missions, maintaining the ready-state industrial base, and minimizing costly bureaucratic delays.

We look forward to working with both OMB and other agencies to ensure this spirit of commitment and teamwork is carried forth in the requested implementation guidance for Sec. 3610.

Sincerely,

American Council of Engineering Companies (ACEC)  
AFCEA International  
Associated General Contractors of America (AGC)  
CompTIA  
The Center for Procurement Advocacy (CPA)  
Information Technology Industry Council (ITI)  
Intelligence and National Security Alliance (INSA)  
National Defense Industrial Association (NDIA)  
Professional Services Council (PSC)

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<sup>1</sup> [Implementation Guidance for Section 3610 of the Coronavirus, Relief, and Economic Security \(CARES\) Act Frequently Asked Questions](#), The Department of Defense, p. 2, Q6, April 9, 2020.

<sup>2</sup> [Implementation Guidance for Section 3610 of the Coronavirus, Relief, and Economic Security \(CARES\) Act Frequently Asked Questions](#), The Department of Defense, p. 2-3, Q7, April 9, 2020.