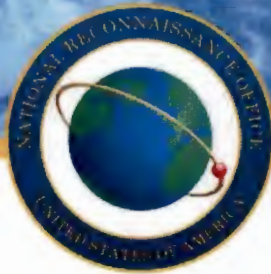


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NATIONAL RECONNAISSANCE OFFICE

OFFICE OF INSPECTOR GENERAL

(U) Final Report: Evaluation of the National Reconnaissance Office's Implementation of Section 3610 Authorized by the Coronavirus Aid, Relief, and Economic Security Act (Project Number 2020-004 S)

04 January 2021

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NATIONAL RECONNAISSANCE OFFICE

*Office of Inspector General
14675 Lee Road
Chantilly, VA 20151-1715*



04 January 2021

MEMORANDUM FOR DIRECTOR, NATIONAL RECONNAISSANCE OFFICE
PRINCIPAL DEPUTY DIRECTOR, NATIONAL RECONNAISSANCE
OFFICE
DEPUTY DIRECTOR, NATIONAL RECONNAISSANCE OFFICE
DIRECTOR, BUSINESS PLANS AND OPERATIONS DIRECTORATE
DIRECTOR, OFFICE OF CONTRACTS

SUBJECT: (U) Final Report: Evaluation of the National Reconnaissance
Office's Implementation of Section 3610 Authorized by the
Coronavirus Aid, Relief, and Economic Security Act
(Project Number 2020-004 S)

(U) The National Reconnaissance Office (NRO), Office of Inspector
General (OIG) provides its report on the Evaluation of NRO's
Implementation of Section 3610 Authorized by the Coronavirus Aid,
Relief, and Economic Security (CARES) Act. The OIG evaluated the
NRO's implementation of Section 3610 authorized by the CARES Act and
identified preliminary impacts to NRO mission.

(U//~~FOUO~~) I appreciate the courtesies extended to my staff in the
execution of this important effort. Please direct any questions you
may have regarding this memorandum report to Ms. Chris [redacted] Chief
of Analytics, at [redacted] (secure).

Susan S. Gibson
Inspector General

Attachment:

(U) Evaluation of the National
Reconnaissance Office's
Implementation of Section 3610
Authorized by the Coronavirus Aid,
Relief, and Economic Security Act
(U//~~FOUO~~)

SUBJECT: (U) Final Report: Evaluation of the National Reconnaissance
Office's Implementation of Section 3610 Authorized by the
Coronavirus Aid, Relief, and Economic Security Act
(Project Number 2020-004 S)

OIG/[] ss/[] 04 Jan 21

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**(U) NATIONAL RECONNAISSANCE OFFICE
OFFICE OF INSPECTOR GENERAL**

**(U) Evaluation of the National Reconnaissance Office's Implementation of Section 3610
Authorized by the Coronavirus Aid, Relief, and Economic Security Act
(Project Number 2020-004 S)**

(U) INTRODUCTION

(U//~~FOUO~~) On 27 March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act,¹ which provided emergency assistance and healthcare response for individuals, families, and businesses affected by the Coronavirus disease. Section 3610 of the CARES Act provided agencies discretionary authority to reimburse costs of paid leave to federal contractors and subcontractors using existing appropriations to keep these individuals in a ready state and to protect the life and safety of government and contractor personnel. Specifically, Section 3610 authorized the National Reconnaissance Office (NRO) to modify, without consideration, the terms of existing contracts or other agreements to reimburse contractors for this paid leave, using the minimum applicable contract billing rates (not to exceed an average of 40 hours per week) through 30 September 2020, subject to certain conditions.² As of 25 August 2020, the NRO had [] million paid or pending Section 3610-related payments to [] contractors across [] contracts.

(U) Given the unprecedented circumstances surrounding these Section 3610 authorities, including the potential risk to NRO programs as well as substantial funding outlays, the NRO Office of Inspector General (OIG) conducted an evaluation of the NRO's implementation of Section 3610 of the CARES Act. The objectives were to evaluate the NRO's implementation of Section 3610 authorized by the CARES Act and to identify preliminary impacts to mission. The OIG determined the NRO used a multifaceted strategy consistent with Section 3610 and OMB guidance to ensure mission resilience while protecting the health and safety of the NRO contractor workforce. The OIG also identified potential impacts to mission that could influence the efficiency and effectiveness of NRO's activities moving forward.

(U) BACKGROUND

(U) Federal Guidance.

(U) On 31 January 2020, the Secretary of Health and Human Services declared a public health emergency for the United States. On 11 February, the World Health Organization announced an official name for the disease first identified in Wuhan, China in 2019 as Coronavirus Disease 2019, or COVID-19. On 13 March, the President declared a national emergency.³ Three days later, the White House and Center for Disease Control (CDC) issued "The President's Coronavirus Guidelines for America." This two-page document provided guidance on slowing

¹ (U) Public Law Number 116-136.

² (U) Effective 1 October 2020, the President signed a continuing resolution that extended CARES Act Section 3610 through 11 December 2020.

³ (U) Letter from President Donald J. Trump on "Emergency Determination Under the Stafford Act," dated 13 March 2020.

the spread of the virus and noted “If you work in a critical infrastructure industry, as defined by the Department of Homeland Security (DHS), such as healthcare services and pharmaceutical and food supply, you have a special responsibility to maintain your normal work schedule. You and your employers should follow CDC guidance to protect your health at work.”

(U) On 19 March, DHS’s Cybersecurity and Infrastructure Security Agency (CISA) issued a memorandum that identified the Defense Industrial Base as a Critical Infrastructure Sector.⁴ On 20 March, the Under Secretary of Defense (USD) for Acquisition and Sustainment issued a memorandum that stated the Defense Industrial Base Essential Critical Infrastructure Workforce included aerospace; mechanical and software engineers; manufacturing/production workers; information technology support; security staff; security personnel; intelligence support aircraft and weapon systems mechanics and maintainers; suppliers of medical supplies and pharmaceuticals, and critical transportation support.⁵

(U) The same day the USD issued another memorandum on Defense Industrial Base Contract Considerations that stated

Contractor personnel performing under DO or DX rated⁶ defense contracts are considered to be part of the Essential Critical Infrastructure Workforce. For contractor personnel performing under unrated orders that directly support mission readiness or national security, the Senior Procurement Executives and their associated Head of Contracting Activities are permitted to determine which contracted functions are parts of the Essential Critical Infrastructure Workforce.⁷

(U) The Office of Management and Budget (OMB) also issued guidance related to federal contract performance and resiliency. Figure 1 illustrates the timeline of events and guidance issued in response to the growing pandemic. The OIG highlighted the relevant criteria used during this evaluation in orange.

⁴ (U) U.S. Department of Homeland Security, Cybersecurity and Infrastructure Security Agency, “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response,” dated 19 March 2020.

⁵ (U) The Under Secretary of Defense, “Defense Industrial Base Essential Critical Infrastructure Workforce,” dated 20 March 2020.

⁶ (U) 15 CFR 700 Defense Priorities and Allocations System states a rated order is a prime contract, subcontract, or purchase order issued in support of an approved national defense or energy program, and which requires preferential treatment in accordance with the provisions of the Defense Priorities Allocation System (DPAS). The Under Secretary of Defense for Acquisition, Technology, and Logistics approves DO rated orders and nominates to the Secretary of Defense for approval of DX rated orders. A DX rating is assigned to those programs of the highest national priority and takes preference over DO rated and unrated orders.

⁷ (U) Office of the Under Secretary of Defense, “Defense Industrial Base Contract Considerations,” dated 20 March 2020.

(U) Figure 1: Timeline of Events

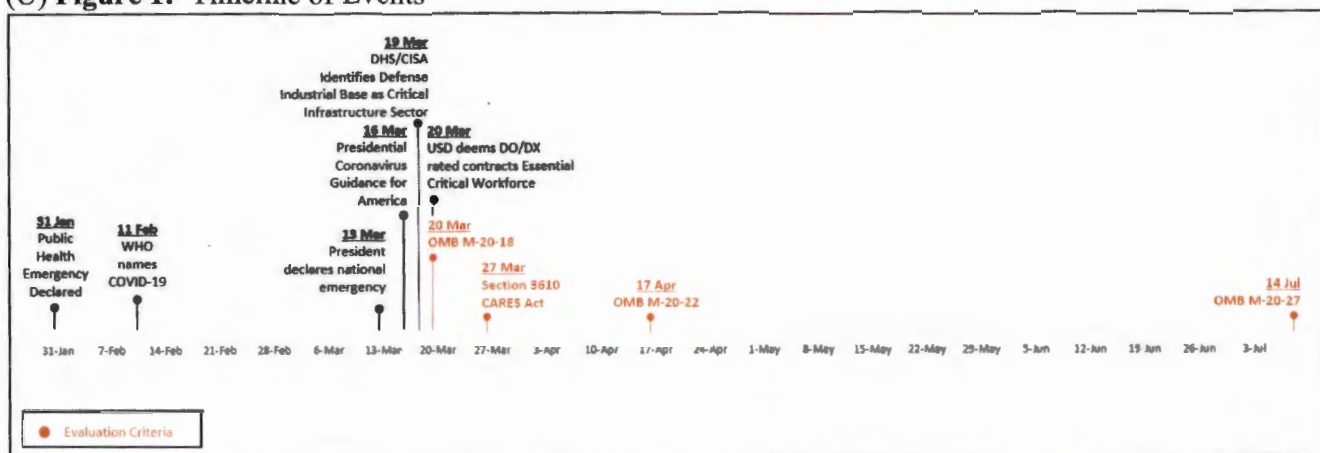


Figure is Unclassified.

(U) **OMB Memorandum 20-18 (OMB M-20-18)**, “Managing Federal Contract Performance Issues Associated with the Novel Coronavirus (COVID-19),” dated 20 March 2020, identified steps to help agencies ensure the safety of personnel while maintaining continued contractor performance in support of agency mission, wherever possible and consistent with the precautions issued by the CDC. Those steps included the following:

- (U) Evaluate and maximize telework for contractor employees wherever possible;
- (U) Be flexible in providing extensions to performance dates if telework or other flexible work solutions, such as virtual work environments, are not possible, or if a contractor is unable to perform in a timely manner due to quarantining, social distancing, or other COVID-19 related interruptions;
- (U) Consider whether it is beneficial to keep skilled professionals or key personnel in a mobile ready state⁸ for activities the agency deems critical to national security or other high priorities; and
- (U) Encourage agencies to leverage the special emergency procurement authorities authorized in connection with the President’s emergency declaration under section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.⁹

(U) The memorandum also noted that requests for equitable adjustment should be considered on a case-by-case basis in accordance with existing agency practices, taking into account, among other factors, whether the requested costs would be allowable and reasonable to protect the health and safety of contractor employees as part of the performance of the contract.¹⁰

(U) **Section 3610 of the CARES Act** provides agencies an additional discretionary authority 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)

⁸ (U) Pursuant to OMB M-20-27, “ready state” refers to a contractor’s ability to mobilize and resume performance in a timely manner as local conditions permit, consistent with the national guidelines for Opening Up America Again.

⁹ (U) 42 U.S.C. §§ 5121 – 5207.

¹⁰ (U) According to Federal Acquisition Regulation § 31.201-3, what is “reasonable,” is what a prudent person would do under the circumstances prevailing at the time the decision was made to incur the cost (e.g., did the contractor take actions consistent with CDC guidelines; did the contractor reach out to the contracting officer or the contracting officer representative to discuss appropriate actions).

for any paid leave, including sick leave, that 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. The authority only applies to a contractor whose employees or subcontractors

- (U) cannot perform work on a site that has been approved by the Federal Government, including a federally-owned or leased facility or site, due to facility closures or other restrictions, and
- (U) cannot telework because their job duties cannot be performed remotely during the public health emergency declared on 31 January 2020 for COVID-19.

(U) The maximum reimbursement authorized by this section shall be reduced by the amount of credit a contractor is allowed pursuant to division G of Public Law 116-127 and any applicable credits a contractor is allowed under this Act.

(U) **OMB Memorandum 20-22**, “Preserving the Resilience of the Federal Contracting Base in the Fight Against the Coronavirus Disease 2019 (COVID-19),” dated 17 April 2020, supplemented the steps for a multifaceted strategy in OMB M-20-18 with guidance for the implementation of Section 3610 of the CARES Act. It provided guiding principles to help agencies determine the appropriate role of Section 3610 in supporting the needs of their contractors and subcontractors, both small and large, recognizing that reimbursement is subject to the availability of funds. The guidelines were designed to support continued exercise of sound business judgment by agencies and the acquisition workforce in the use of section 3610, in that application of the guidelines would support rationally based decisions that reflect the best interest of the Government in any given situation, fully supported by contractor records that are subject to oversight, and that safeguard the taxpayers funding these efforts.¹¹ These principles are as follows:

- (U) First, support contractor resiliency by carefully considering if reimbursing paid leave to keep the contractor in a ready state is in the best interest of the Government for meeting current and future needs, and be mindful of the challenges faced by small businesses.
- (U) Second, exercise good stewardship of taxpayer dollars by maintaining mission focus and evaluating the use of section 3610 in the broader context of all strategies to promote contractor resiliency, as well as ensuring that all restrictions related to the circumstances in which reimbursements may be made, and the amount of reimbursement allowed, are followed. In doing so, the government must work with the contractor to secure necessary documentation to support reimbursement and prevent duplication of payment.
- (U) Third, track the use of section 3610.

(U) **OMB Memorandum 20-27**, “Additional Guidance on Federal Contracting Resiliency in the Fight Against the Coronavirus Disease (COVID-19),” dated 14 July 2020, supplemented OMB M-20-18 and M-20-22 with additional guidance that further addressed the resiliency of the federal acquisitions workforce and the federal contractors who support the agency mission, including in the fight against COVID-19. The memorandum contained a “frequently asked

¹¹ (U) OMB-20-22 states, “Using these principles is expected to result in different applications of this authority across buying offices within agencies and across the Federal Government. This variance is no different than that would typically be expected in the application of any equitable remedy to different mission requirements, contractual arrangements, and funding situations, especially in exigent circumstances.”

questions” attachment that provided updated guidance and highlighted examples from agency guidance and activities to further assist the acquisition workforce. These issues pertained to acquisition efficiencies, tracking procurement activity, paid leave for contractor employees under Section 3610 of the CARES Act, and other considerations.

(U) This memorandum encouraged agencies to carefully consider whether reimbursing paid leave to keep contractors in a ready state is in the best interest of the government for meeting current and future needs. The guidance recognized the legitimate role of paid leave in keeping the contractor in a ready state and called on agencies to give Section 3610 careful consideration as part of a multi-faceted resiliency strategy. At the same time, consistent with the express terms of Section 3610, the guidance reminded agencies that reimbursement was subject to reduction by the amount of credit a contractor allowed under other provisions of the CARES Act and Division G of the Families First Coronavirus Response Act (Public Law 116-127) that included loan relief, favorable tax-changes, and other assistance. The memorandum further noted that because Congress did not appropriate funds for the express purpose of reimbursing paid leave under Section 3610, agencies must consider budget constraints in determining if reimbursing paid leave is in the best interest of the government for meeting current and future needs.

(U) NRO Guidance.

(U) On 2 March 2020, the NRO Office of Contracts (OC) issued the first in a series of Notice to Industry Partners (NOTIPs) that discussed NRO preparations for a possible COVID-19 outbreak for the NRO contractor workforce. The NOTIPs did not change the scope of existing contracts; instead, they provided, at an enterprise level, direction and guidance within existing contractual arrangements. In addition, the NRO OC held industry calls to provide guidance and address specific contractor questions and concerns. As of 28 September 2020, the NRO OC had issued 25 pandemic-related NOTIPs.

(U) On 17 March, the NRO began a modified work schedule. On 18 March, the NRO issued NOTIP 2020-02-6, which stated, “As the COVID-19 outbreak evolves, industry partners nationwide will experience disruptions to contract performance through the loss of people, blocked access to facilities, and/or disruption of critical supply chains.” The NOTIP stated the NRO’s top priority is the “continued operations of our on-orbit satellites, the mission ground stations, and the continued flow of intelligence to our users.”

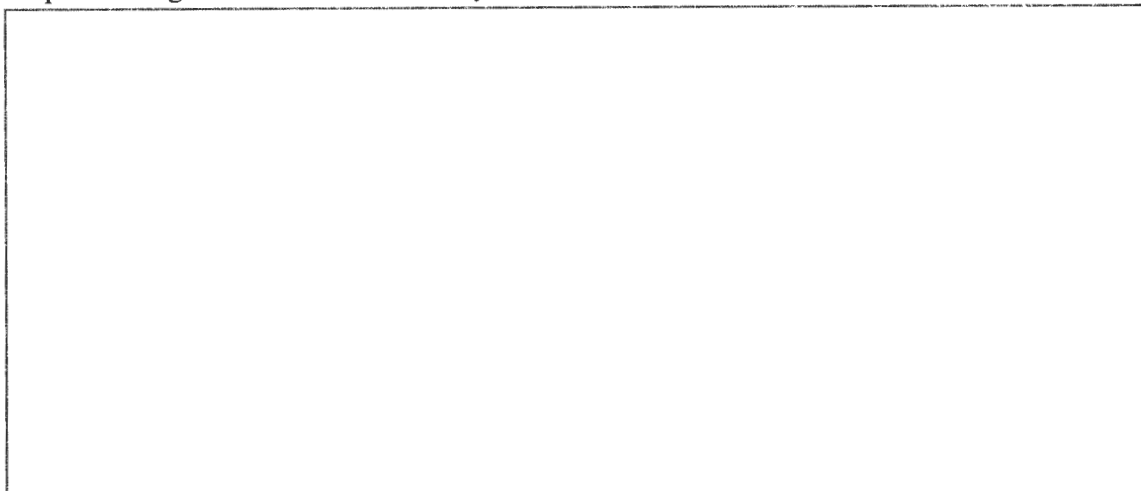
(U) On 23 March, the NRO issued NOTIP 2020-02-7, which defined and communicated NRO’s mission-essential functions and mission-critical functions as follows:

- (U) Mission-essential functions: (1) maintain geospatial intelligence and signals intelligence services and products, and 2) maintain integrated space, special program, and terrestrial communications capabilities to ensure timely delivery of critical national reconnaissance data.
- (U) Mission-critical functions: Any factor (component, equipment, process, procedures, software, etc.) that is essential to maintaining operations or to the safety and health of the organization. Failure or disruption of mission-critical factors will result in serious impact to mission operations or upon the workforce.¹²

¹² (U) NOTIP 2020-02-7, “Baselining NRO Information and Direction for Coronavirus (COVID-19) Pandemic for the NRO Contractor Workforce,” dated 23 March 2020.

(U) NOTIP 2020-02-7 also provided flexible business hours, possible telework options, and altered place of performance.

(U) On 26 March, the NRO issued NOTIP 2020-02-8, which stated that, effective immediately, contract clause [REDACTED] “Continuity of Operations Requirements,” would be read into all contracts performing work at an NRO facility.¹³ This clause stated:



(U//~~FOUO~~) The next day, on 27 March—coincidentally the same day the CARES Act was signed into law—the NRO issued guidance regarding “Reserve Contractor Employees” to ensure continuity of operations for mission-essential functions.¹⁴ NRO Directorate and Office (D and O) leaders had previously identified certain contractor employees to perform mission-essential functions (e.g., satellite operations) and also identified additional contractor employees to be “reserve,” or backup, to those mission-essential contractor employees, in that these “reserve” employees would need to be prepared to take the place of any mission-essential contractor employees if they were to become ill. “Reserve” employees signed an “Isolation Agreement” that stated they would isolate to maintain health and be available to backfill the primary mission essential function with no more than two hour notice. These contractors remained in a paid status without needing to charge any accrued leave and companies could charge fee against these hours.

(U) On 31 March, the NRO issued NOTIP 2020-02-10, which officially implemented Section 3610 of the CARES Act.¹⁵ The NRO OC issued subsequent NOTIPs to provide additional 3610 CARES Act guidance to contractors, including invoicing instructions. Figure 2 overlays the NRO’s issuance of NOTIPs with the previously illustrated timeline from Figure 1.

¹³ (U) NOTIP 2020-02-8, “NRO Information and Direction for Coronavirus (COVID-19) Pandemic for the NRO Contractor Workforce,” dated 26 March 2020.

¹⁴ (U) NOTIP 2020-02-9, “NRO Information for Coronavirus (COVID-19) Pandemic for the NRO Contractor Workforce,” dated 27 March 2020.

¹⁵ (U) NOTIP 2020-02-10, “NRO Information for Coronavirus (COVID-19) Pandemic for the NRO Contractor Workforce,” dated 31 March 2020.

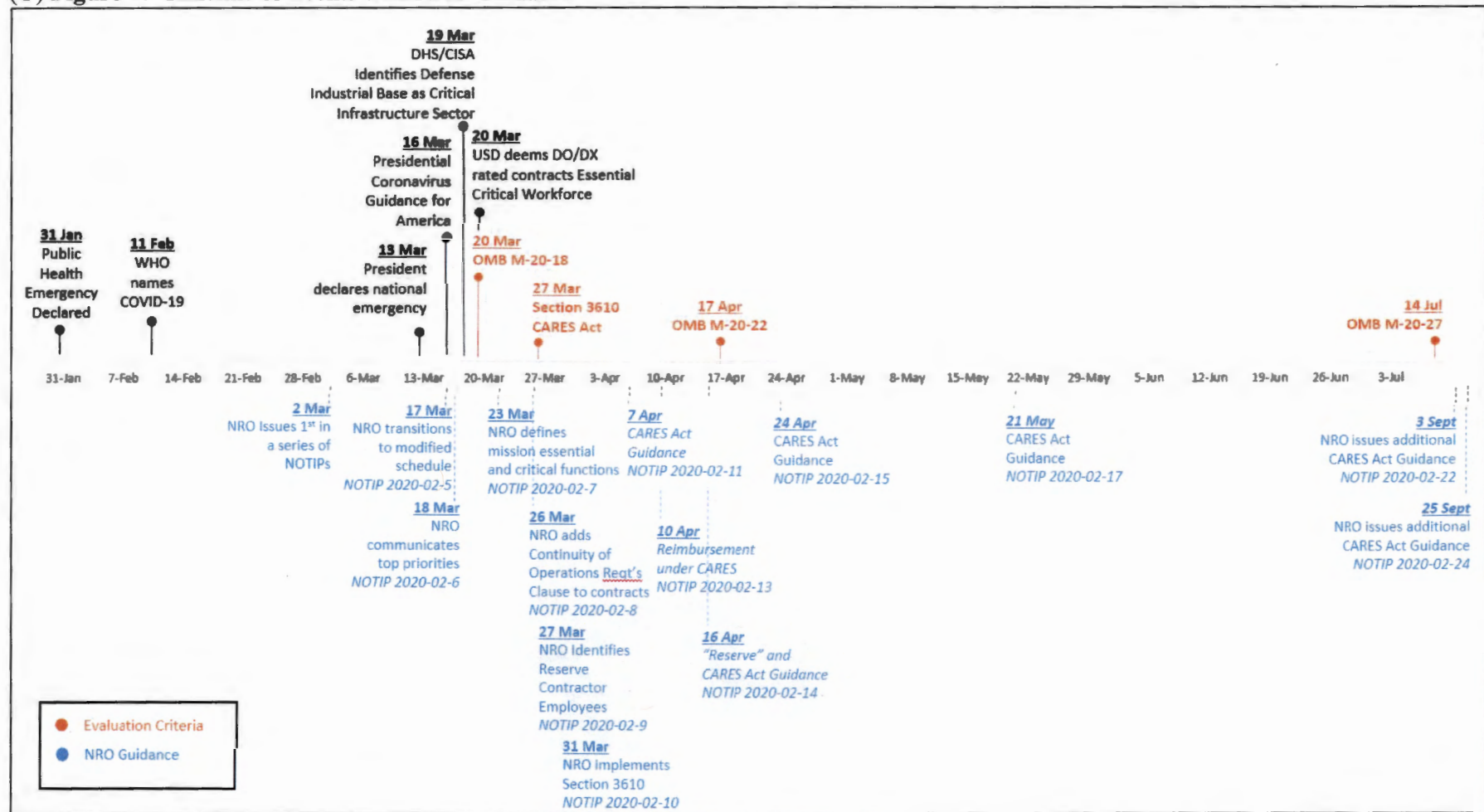
(U) **Figure 2:** Timeline of Events with NRO Guidance

Figure is Unclassified.

(U) **SCOPE AND METHODOLOGY**

(U) The OIG conducted this evaluation from August through September 2020 in accordance with the Council of the Inspectors General on Integrity and Efficiency Quality Standards for Inspection and Evaluation (“Blue Book”).

(U) To evaluate the NRO’s implementation of Section 3610 of the CARES Act, the OIG

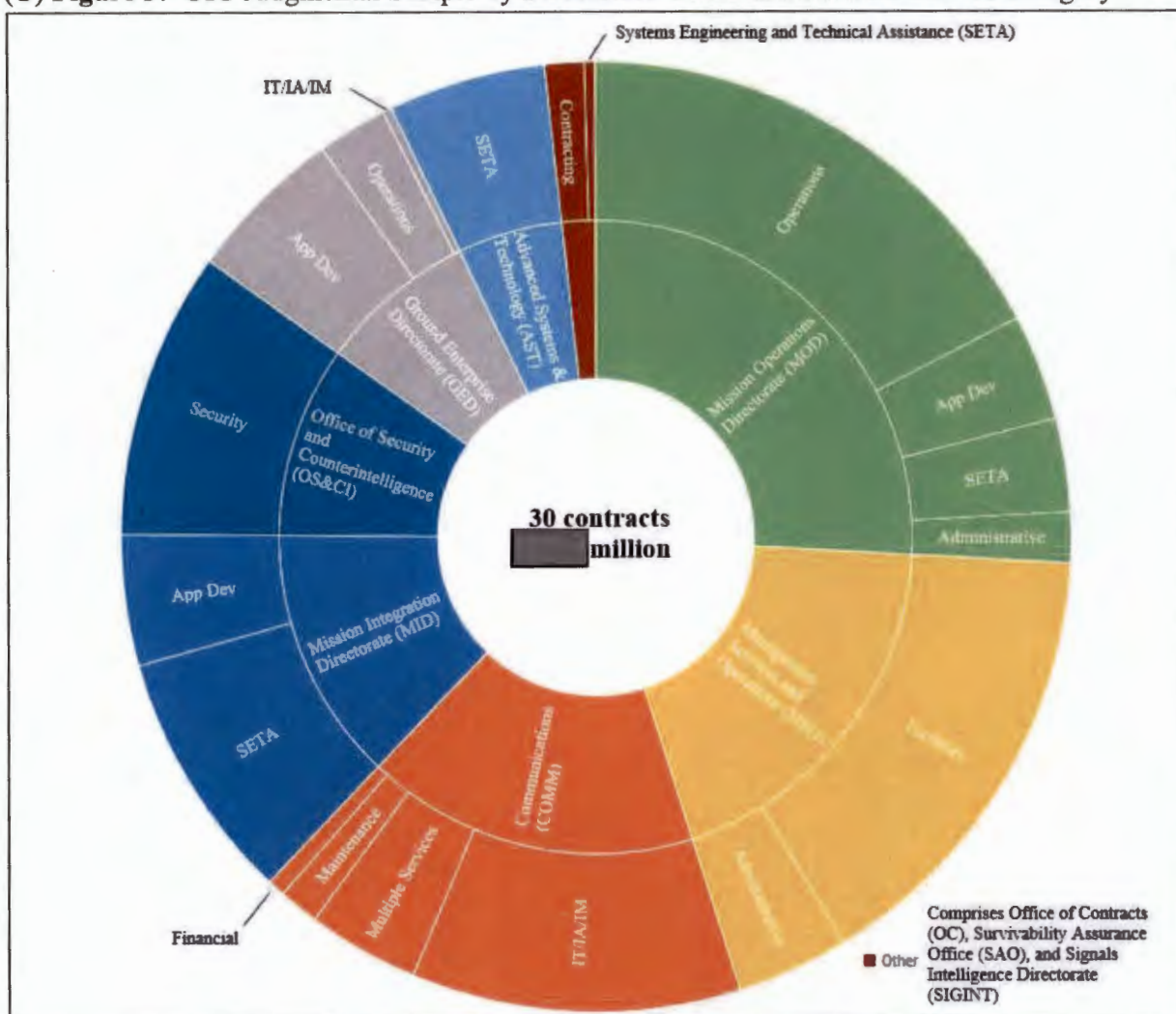
- (U) reviewed OMB M-20-18, the criteria set forth in Section 3610 authorized by the CARES Act and the supplemental OMB guidance issued in M-20-22 and M-20-27;
- (U) reviewed NRO guidance set forth in NOTIPs to evaluate consistency with Section 3610 and the OMB guidance; and
- (U) interviewed OC and Business Plans and Operations Directorate (BPO) personnel.

(U) To identify preliminary impacts to mission, the OIG obtained and analyzed Section 3610 payments as of 25 August 2020. The OIG reviewed the Director, NRO’s weekly impact reports to identify any relevant information related to CARES Act payments and the selected contracts. The OIG also reviewed relevant survey comments obtained during the ongoing OIG Evaluation of the NRO’s COVID-19 Pandemic Response¹⁶ to identify specific CARES Act concerns.

(U) The OIG judgmentally selected a sample of 30 contracts that comprised

- (U) some of the highest Section 3610 expenditures (56 percent of total Section 3610 expenditures);
- (U) various NRO Ds and Os (10 out of the ☐ total Ds and Os);
- (U) various contractors (21 out of the ☐ total contractors submitting Section 3610 invoices);
- (U) various services provided, such as Facilities, Systems Engineering and Technical Assistance (SETA), Security, Application Development (App Dev), Operations, Administrative, Information Technology/Information Assurance/Information Management (IT/IA/IM), and other support services (illustrated in Figure 3);
- (U) various contract types; and
- (U) various company sizes.

¹⁶ (U) Project Number 2020-003 S issued 13 October 2020.

(U) **Figure 3: OIG Judgmental Sample by Directorate/Office and Contract Service Category**Figure is Unclassified//~~For Official Use Only~~.

(U) For each contract selected, the OIG obtained an understanding of the type of work provided through a review of the statement of work (SOW) and the specific contract line item numbers (CLINs) charged under the CARES Act and interviewed Contracting Officers Technical Representatives (COTRs) and Contracting Officers (COs) to identify potential mission impacts. The OIG also obtained and reviewed CARES Act invoices and supplemental support to understand how individuals and hours were being charged across the various contracts. The OIG also interviewed two contract program billing managers to identify challenges, if any, with the account for Section 3610 costs. The OIG did not validate the completeness and accuracy of CARES Act invoices submitted by contractor companies, nor did the OIG validate the related payments made by the NRO during this evaluation.

(U) RESULTS***I. (U) Evaluation of the NRO's Implementation of Section 3610 Authorized by the CARES Act***

(U) The OIG determined the NRO guidance issued via NOTIPs generally aligns with the authorities and limitations set forth in Section 3610 authorized by the CARES Act. The NRO used a multifaceted strategy consistent with Section 3610 and OMB guidance to ensure mission resilience while protecting the health and safety of the NRO contractor workforce. Examples include the following:

- (U) The time frame provided for Section 3610 reimbursement was not before 27 March and not after 30 September 2020.¹⁷
- (U) The reimbursement amount was to be at the minimum contract billing rates and was not to exceed an average of 40 hours per week.
- (U) The reimbursement would not include fee.
- (U) The NRO instructed contractors to reduce Section 3610 reimbursement requests by any other applicable credits taken.
- (U) The NRO instructed contractors to submit CARES Act costs on a separate invoice with a certification document that attested
 - (U) all charges were fully compliant with the CARES Act;
 - (U) all charges in the invoice were adjusted for any credits allowed;
 - (U) direct hours were valid and not chargeable to another contract or indirect activity;
 - (U) the invoice did not include fee or profit (except charges for mission-essential personnel placed in a "reserve" status by the government); and
 - (U) the invoice was made in good faith, and supporting data was accurate and complete.

(U) The NRO elected to extend Section 3610 coverage to all companies with NRO contracts.¹⁸ While this decision exposed the NRO to potentially significant Section 3610-related payments, OC officials stated that the cost to replace a cleared, experienced contractor was much greater than making payments under Section 3610 given the limited pool of cleared personnel and the length of the clearance process.¹⁹ OC anticipated the NRO would primarily incur CARES Act costs on those contracts with a government-only place of performance.

(U//~~FOUO~~) The NRO used available NRO appropriations and funds provided from others to reimburse Section 3610 invoices. The NRO did not modify the terms and conditions of its contracts to allow the contractor to submit Section 3610 invoices. The OIG also noted the NRO did not create new contract CLINs to capture Section 3610 costs but instructed contractors to invoice against existing direct labor CLINs on separate invoices marked as "CARES Act Invoice." OC management stated, "We believe that the CARES Act statutory authority made the need for implementing regulations (i.e., changes to the NRO Acquisition Model) or contract

¹⁷ (U) Consistent with the recent continuing resolution, the NRO extended CARES Act guidance through 11 December 2020.

¹⁸ (U) Section 3610 did not apply to Independent Consultants.

¹⁹ (U) According to the NRO's Office of Security and Counterintelligence, to clear an NRO contractor on average takes 355 days and costs \$4,725.

modifications inapplicable.” The OIG determined the NRO NOTIP guidance to authorize use of section 3610 and separately identify and track costs met the intent of the criteria and supplemental guidance while minimizing the burden on the reduced OC workforce.

(U//~~FOUO~~) The OIG interviewed two contractor-billing managers to understand the potential impact to contractor accounting practices and identify any concerns with cost allowability. Both individuals said they had to establish new accounts within their cost accounting systems to separately track the Section 3610 paid leave costs. While this initially caused additional work to create all new accounts, both contractors stated there was minimal impact as these accounts enabled the contractor to separately identify and invoice Section 3610 costs and ensure they properly excluded these costs from award fee cost pools per the NRO’s direction.

II. (U) Preliminary Impacts to Mission

(U) The OIG identified potential impacts to mission as it relates to the NRO’s ability to make timely, consistent decisions at the enterprise level. This may influence the efficiency and effectiveness of NRO’s activities moving forward. Specifically, the OIG noted the following:

1. (U//~~FOUO~~) The NRO has not yet [REDACTED]
[REDACTED]
2. (U) The pandemic response drove expanded use of what were historically limited use contract clauses, which may have resulted in excess contracts deemed defense priority or mission essential.
3. (U) The NRO lacks a mechanism to identify contracts approved for telework.

(U) Finally, the NRO’s use of Section 3610 presents other potential risks and areas of concern.

1. (U//~~FOUO~~) The NRO Has Not Yet [REDACTED] [REDACTED]

(U) As previously noted, OMB issued M-20-18 to help agencies maintain the resilience of the federal contracting base through a multifaceted strategy that considered the use of telework, contract performance extensions, and where appropriate, reimbursement for paid leave or other forms of equitable adjustment necessary as a direct result of COVID-19. The NRO OC communicated its strategy to the contractor workforce via NOTIPs, which considered the elements cited in OMB M-20-18. In NOTIP 2020-02-6, the NRO communicated its top priority as the “continued operations of our on-orbit satellites, the mission ground stations, and the continued flow of intelligence to our users” and noted a comprehensive list of applicable contracts was forthcoming. While OC was able to identify in [REDACTED] which contracts contained the Continuity of Operations (COOP) clause and which were [REDACTED] [REDACTED] rated, OC had to rely on data calls to Ds and Os to identify mission essential activities. This resulted in confusion across the enterprise as the term “mission-essential” was confused with [REDACTED] COOP, and mission critical and led to inconsistent ad hoc decision making.

²⁰ (U) [REDACTED] is the procurement/contracting tool where the document associated with a contract is created and stored. This includes the contract file itself and all its modifications along with a variety of other information to include Statements of Work and Request for Contract Actions tied to the contract.

(U//~~FOUO~~) The OIG confirmed the NRO has not [REDACTED] [REDACTED] Officials from the Management Services and Operations Directorate and the Continuity and Emergency Management Group (CEMG) reported that they are currently working to fully identify and document the [REDACTED] [REDACTED] which are issues the OIG has highlighted in a variety of reports, including

- (U) Inspection of the Continuity and Critical Infrastructure Program Office;²¹
- (U) Inspection of NRO Mission Resiliency;²²
- (U) Audit of the NRO Insider Threat Program;²³ and
- (U) FY 2019 Federal Information Security Modernization Act Evaluation.²⁴

(U//~~FOUO~~) This lack of [REDACTED] impacted the NRO's ability to make consistent timely decisions and may have resulted in excess costs incurred. On 27 March 2020, the same day Section 3610 was authorized, the NRO introduced the "Reserve Contractor Employee" capability in NOTIP 2020-02-9 to ensure continuity of operations for mission-essential functions. According to the NOTIP, D and O leaders were to identify contractor employees that perform mission-essential functions (e.g., satellite operations) and backups to those mission-essential contractor employees (referred to as "reserve"). The NRO then authorized the contractor to direct-bill (including fee) the reserve employees' time spent at home to be on call to take the place of mission-essential contractor employees if they were to become ill. While reserve employees initially were identified to support an impending launch schedule, OC relied on Ds and Os to identify their mission essential functions and reserve individuals. This ad hoc D and O level decision-making ultimately extended the reserve designation to [REDACTED] contract personnel across the enterprise. Because the NRO has not [REDACTED] [REDACTED] it could not have assurance that it identified "reserve" eligibility consistently across the enterprise and could have resulted in the NRO paying fee for work not deemed an essential function or essential supporting activity.

(U//~~FOUO~~) The NRO's "Reserve Contractor Employee" notice was issued the same day as Section 3610 authorization. Section 3610 authorities would have permitted the NRO to rescind the "reserve" category and not incur fee on those direct hours, yet the NRO continued to permit reserve contractor status with resulting fee on [REDACTED] contractors until the NRO moved into Recovery Phase A in late June.

(U) Although this approach may have been reasonable to ensure mission and safety of the contractor workforce, a lack of an enterprise understanding of who may be a mission-essential employee may lead to short term deficiencies including the NRO deeming non-mission essential personnel as essential and unnecessarily paying fee on "reserve" contractor employees. It could also result in long-term risk to NRO managements' ability to timely and effectively ensure the protection of the NRO's most critical assets and functions. This hindered the NRO's ability to execute its strategy at an enterprise level and led to ad-hoc decision making at the D and O level.

²¹ (U) Project Number 2006-002 N, dated 31 March 2017.

²² (U) Project Number 2017-003 N, dated 2 March 2018.

²³ (U) Project Number 2017-002 A, dated 18 April 2018.

²⁴ (U) Project Number 2019-004 A, dated 31 October 2019.

2. (U) The pandemic response drove expanded use of what were historically limited use contract clauses.

(U) Before authorization of section 3610, the NRO was proactively modifying its contracts to provide maximum flexibility. According to OC officials, the NRO began to realize state restrictions on business operations and travel could adversely affect NRO programs if contractor facilities were forced to close. The NRO modified additional contracts to include the [REDACTED] beyond the traditional use.

(U//~~FOUO~~) [REDACTED] Historically, OC incorporated the [REDACTED] into mission essential contracts where the ability to protect production supply chains was paramount to program success. In response to COVID-19 restrictions, the NRO modified contracts to include the [REDACTED] if a D or O determined the performance was mission essential. As of 15 September 2020, the OIG identified [REDACTED] contracts that contained the [REDACTED]. The OIG noted a few contracts did not appear to be “mission essential” as the services provided were administrative and support services.

(U//~~FOUO~~) OC then used its Defense Production Act authority to issue “stay open,” “reopen,” or “freedom of travel” letters to contracts with this [REDACTED] to enable contractor employees to travel to contractor facilities against state restrictions. OC personnel stated that when the NRO began issuing these [REDACTED] letters, they received additional requests from non-essential contractors so they could keep their contractor employees working against state restrictions. As COVID-related restrictions spread across the United States, the OIG noted the use of these letters extended beyond the original intent as OC subsequently removed the [REDACTED] reference to enable issuance for requests for any contracts deemed mission essential. The OIG noted because the NRO has not [REDACTED] OC was not in a position to deny requests and ultimately led OC to issue [REDACTED] letters and reject zero requests.

(U) Nontraditional use of [REDACTED] The NRO stated in NOTIP 2020-02-8, [REDACTED] “Continuity of Operations Requirements” would be read into all contracts performing work at an NRO facility to provide maximum contract flexibility. This included contractors at all mission ground stations and NRO headquarters. According to NRO OC officials, historically, the [REDACTED] had been limited to *mission-essential* contracts performing at an NRO facility within the context of weather-related closures or short-term emergencies. Prior to the pandemic, a prolonged scenario had not been considered. Adding this clause enabled the NRO to make changes to the contracts, including the services to be performed, location of performance, and/or time of performance. The OIG noted the expanded use of this this clause resulted in an additional [REDACTED] contracts (44 percent of the NRO’s [REDACTED] active contracts) being considered mission-essential.

(U) Consideration #1 for Director, OC: Review all contracts with [REDACTED] to ensure the work contracted meets the intention of the clause.

²⁵ (U) [REDACTED]

(U) Consideration #2 for Director, OC: *Once the NRO [redacted] [redacted] review all active contracts to ensure consistent contract clause implementation.*

3. (U) The NRO lacks a mechanism to identify contracts approved for telework.

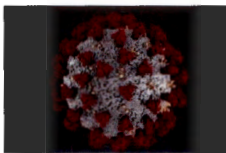
(U) The NRO does not have a telework contract clause; instead, telework is negotiated into individual SOWs. This posed challenges for OC as it assessed available telework options. Without a comprehensive list of contracts approved for telework, the NRO lacks insight into the extent of potential telework availability and is unable to make informed, risk-based decisions at the enterprise level.

(U) Consideration #1 for Director, OC: *Consider the use of a telework clause or tracking mechanism to provide management with a complete list of contracts approved for telework to enable management to make informed, timely, risk-based decisions.*

4. (U) The NRO's use of Section 3610 presents other potential risks and areas of concern.

(U) The NRO used Section 3610 authorities primarily to reimburse paid leave on service-type contracts performed in NRO facilities. OIG interviews with COs and COTRs and reviews of SOWs, CARES Act invoices, pandemic survey comments and D and O weekly impact reports identified potential risks and areas of concern from the NRO's use of Section 3610.

(U) Increased Risk of COVID Transmission



(U) A concern expressed during numerous interviews was the potential for increased COVID transmissions if the CARES Act ended on 30 September.²⁶ Contractors may be required to take personal leave or leave without pay, and given the amount of leave they have already taken, contractors may feel pressured to come to work even if they are sick to avoid taking more leave. The OIG heard additional concerns regarding the treatment of costs should a group of contractors be directed to self-isolate due to potential exposure. While large contractor companies may be able to absorb these leave costs through indirect cost pools, smaller companies may not, which could increase employee pressure to come to work even if they feel ill.

(U) Decreased Productivity



(U) NRO COs and COTRs collectively noted reduced contractor productivity. Contractors reimbursed for paid leave were not providing direct support to NRO efforts. One COTR likened it to the NRO receiving a 50-cent return on every dollar invested. The OIG identified a number of situations that resulted in decreased productivity and increased use of Section 3610. Examples include the following:

²⁶ (U) Section 3610 authority was extended through 11 December; however, these concerns remain if this authority ends before the pandemic is over.

- (U) The NRO implemented an alternate blue/gold work schedule.
- (U) Contractor taskings were down since government personnel were not in the office full-time to assign work.
- (U) Reduced staffing levels decreased overall demand for certain services, such as facilities and security support.
- (U) Limited telework opportunities.
- (U) Certain contractors had alternate places of performance negotiated into their contract, but the NRO prohibited travel between facilities. As a result, contractors used Section 3610 on their “off week.”

(U) Increased Risk of Improper Payments



(U) The OIG noted that Section 3610 payments have increased the NRO’s risk of improper payments. From March through August, the NRO issued payments on nearly 600 Section 3610 CARES Act invoices. Accounting for these paid leave costs required the NRO and its contractors to establish new processes to identify, invoice, review, reimburse, and track these amounts. These new processes require enhanced scrutiny; however, the NRO’s government workforce was reduced due to the ongoing pandemic. As a result, the level of oversight provided may have been insufficient to ensure the Section 3610 reimbursements complied with conditions specified in the CARES Act and NRO guidance.

(U) The OIG did not audit the validity or accuracy of invoices and supplemental worksheets submitted; however, the OIG did observe the following during the course of this evaluation and communicated these observations to the relevant CO or COTR:

- (U) Section 3610 paid leave hours submitted appeared to exceed available monthly hours for one supplemental worksheet.
- (U) Fixed fee appears to have been charged on one invoice.
- (U) Paid leave hours were invoiced for a recognized federal holiday.

(U) The OIG will also consider these observations in a potential future audit of Section 3610 payments.

(U) Increased Risk of Fraud



(U) The OIG noted the pandemic created financial pressures for companies and stressors for contractor employees that could increase the risk of fraud at the NRO. The CARES Act relieved some of that pressure by authorizing paid leave, but companies could not charge fee on Section 3610 hours billed. The paid leave costs are also excluded from award fee pools, further reducing previously anticipated contractor revenues. In addition, the number of relief options available, including Section 3610, the paycheck protection program, and requests for equitable adjustments, coupled with a reduced government workforce limits the extent of NRO invoice reviews, and provides an environment with increased potential for fraud.

(U) Contractor employees may feel pressure to commit time and attendance fraud once the CARES Act runs out and paid leave is no longer an option. Interviews with COTRs noted telework options are limited, and for contractors with school-

age children, it could be a challenge to juggle working full-time and supporting virtual schooling. Pandemic survey comments also revealed pressure to make up the hours charged as leave.

Increased Risk of Loss of Expertise



(U) The lack of telework options for NRO contractors poses unique challenges to the NRO. A few COs and COTRs noted some of their contractors chose to leave the NRO and Intelligence Community to work for other employers who provided more flexibility with work options. The NRO could lose additional contractor expertise if government facilities continue to operate at reduced staffing levels.

(U) While the NRO has more flexibility with contractors performing work at its government facilities, those working at contractor locations are outside of the NRO's control. However, the treatment of these individuals by their company could negatively affect the NRO's ability to retain these cleared, experienced individuals. Some comments received during the OIG's pandemic survey noted an increased densification of site due to the relocation of employees out of government facilities. Some survey respondents stated they did not feel "safe" and felt they had to work long hours.

(U) Potential for Future Unfunded Facility Projects



(U) As previously noted, the NRO has spent over [] million out of existing appropriations. One facilities COTR noted there is sufficient contract funding to cover Section 3610 costs and approved facilities projects, but future efforts could be cancelled if the NRO does not receive additional funding.

(U) Increased Risk to Cybersecurity Posture



(U//~~FOUO~~) Interviews with two COTRs noted that security patching and other information assurance tasks were delayed [] due to the reduced contractor workforce in government facilities and the prioritization of other work. This could further increase the risk to the NRO's cybersecurity posture, an ongoing issue the OIG highlights in its annual Federal Information Security Modernization Act (FISMA) evaluations.

(U) Potential for Additional Reimbursement Requests



(U) Some interviewees stated the NRO could experience a "bow wave" of Section 3610 invoices after 30 September, noting that a few contractors have withheld invoicing during this period until they determine which relief option is the most beneficial. The OIG did not analyze contract invoicing trends during this evaluation but did identify [] contracts with a government-only place of performance that have not submitted Section 3610 invoices as of 25 August. These contracts do not include Independent Consultants who OC noted were not eligible for Section 3610 relief. While there are reasons some contractors may not have used Section 3610 (e.g., they had a firm fixed-price contract or worked longer hours during "on weeks"), there remains the possibility that additional Section 3610 invoicing will occur, which would impose an even greater fiscal strain on the enterprise. To minimize this risk, on 3 September, OC issued NOTIP 2020-02-22, which directed contractors to invoice CARES Act charges in a timely manner. Last, the NRO could also experience increases in contractor requests for

equitable adjustment for schedule delays and additional costs associated with moving contractors out of government facilities.

(U) Contract Acquisition Schedule Delays



(U) Numerous COs and COTRs indicated their contracts have been, or will be, extended as government officials have not been available to clearly define future acquisition requirements. The NRO's Acquisition Center of Excellence reported that social distancing guidelines reduced available desk space and the delay of source selections has extended proposal evaluation timelines and contract awards. This results in potential schedule delays in capabilities and service contracts and increases the costs required to "bridge" existing contracts.

(U) Uncertainty in Future Contractor Pricing



(U) The pandemic created uncertainty in future contractor rate pricing. Factors that could contribute to price increases include the cost of moving contractors out of government facilities and back to contractor locations, lost revenues due to reduced work schedules, and lost contract fees due to Section 3610 usage. A prime contractor billing manager noted that other indirect costs have not occurred (such as travel), which could offset those increases to the indirect cost pools, but it remains too early to determine whether this will happen.

(U) CONCLUSION

(U//~~FOUO~~) While the fieldwork for this review concluded at the end of September 2020, as of 2 November, the NRO reported over [] million in paid or pending Section 3610 related payments. Section 3610 of the CARES Act provided a significant benefit to the NRO and industry partners during the pandemic. Originally set to expire 30 September, the CARES Act Section 3610 was extended through 11 December 2020. The NRO anticipates limited use of this additional authority given the workforce has generally returned to normal operations. However, the United States continues to experience an uptick in COVID-19 cases, which could once again lead to decreased staffing mandates in government facilities. The NRO must ensure it has the critical information readily available to enable informed enterprise-wide decisions to achieve its stated priorities in the most efficient and cost effective manner possible.