



COVID-19 and the Defense Industrial Base: DOD Response and Legislative Considerations

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The Department of Defense (DOD) relies on a *defense industrial base* (DIB) for the products and services that enable DOD’s warfighting capabilities. The DIB includes [private-sector commercial companies](#) ranging in size from small businesses to some of the world’s largest enterprises—all of which have been impacted by the economic pressures associated with the Coronavirus Disease 2019 (COVID-19) pandemic. For additional related resources, see the CRS [COVID-19](#) homepage.

Critical Infrastructure and the DIB

The DIB is considered essential to U.S. national security, and to be [part](#) of U.S. *critical infrastructure* (CI). On March 16, the Administration issued its [Coronavirus Guidance for America](#), which states in part that

If you work in a [CI] industry ... you have a special responsibility to maintain your normal work schedule. You and your employers should follow [Center for Disease Control] guidance to protect your health at work.

Responding to the President’s guidelines, the Department of Homeland Security (DHS) issued a memorandum on March 19 to provide context for state and local officials looking to carry out the [“Identification of Essential CI Workers during COVID-19 Response.”](#) While not binding in nature, the DHS memorandum identifies segments of the DIB that include “Essential Critical Infrastructure” workers, which are

- “Workers who support the essential services required to meet national security commitments ... These individuals, include but are not limited to, aerospace; mechanical

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and software engineers, manufacturing/production workers; IT support; security staff; security personnel; intelligence support, aircraft and weapon system mechanics and maintainers;” and

- “Personnel working for companies, and their subcontractors, who perform under contract to the DOD providing materials and services to the DOD, and [government-owned/contractor operated and government-owned/government-operated facilities](#).”

Some states, such as [Ohio](#), [Pennsylvania](#), and [California](#), used the DHS memorandum to guide the identification of DIB segments doing business within each state as *essential entities*. States have authorized essential entities to maintain physical operations, even under state-issued shelter-in-place or closure of nonessential businesses orders.

For an overview of other federal actions and related legal considerations, see CRS Legal Sidebar LSB10428, *COVID-19 and Federal Procurement Contracts*.

DOD Guidance to Contractors

DOD promulgated initial guidance on potential contract impacts through a March 10 [memorandum](#). This guidance established contracting officers as the controlling authority in the event that contract performance was affected. Contracting officers were “encouraged to engage with ... program managers and requirements owners to determine what ... measures should be taken to ensure the welfare and safety of the total force, while ensuring mission continuity.” Subsequent DOD guidance provided [additional clarity](#). The Under Secretary of Defense for Acquisition and Sustainment issued a March 20 [memorandum](#) echoing DHS’s guidance on identifying segments of the DIB as essential CI workers. Additional [guidance](#) provided by Defense Pricing and Contracting further explained

Contractor personnel performing under [DO or DX rated](#) defense contracts are considered to be part of the Essential [CI] Workforce [see CRS Report R43767, *The Defense Production Act of 1950: History, Authorities, and Considerations for Congress* for a discussion of priority ratings]. For contractor personnel performing under unrated orders but that directly support mission readiness [or] national security, [senior officials] ... are permitted to determine which contracted functions are part of the Essential [CI] Workforce. Contractor personnel performing under unrated contracts that do not directly support mission readiness or national security are not ... elements of the Essential [CI] Workforce.

DOD extended “[maximum telework flexibilities](#)” to contractors when “contract services can be delivered, without mission degradation, while off-site.” DOD took other steps to respond, such as holding [conference calls with stakeholders](#). DOD also [increased its progress payment rates](#), issued at a [pre-determined percentage](#) of actual incurred costs, from 80% to [90% for large businesses and from 90% to 95% for small businesses](#). *Progress payments* are [one option](#) for *contract financing*, or payment of funds to a contractor prior to final government acceptance of contracted supplies or services. Contract financing may assist a contractor in paying costs incurred during contract performance. Given current economic pressures, DOD appears to have determined that it is advantageous to provide a segment of its contractors with additional cash flow in the short term.

The [three military departments](#) also issued guidance relating to potential impacts on contractor operations.

Industry Response

Industry organizations (such as [NDIA](#), [PSC](#), and [AIA](#)) have engaged Congress, DOD, and the Administration to advocate for actions supporting the DIB. Some organizations [encouraged Congress](#) to include language in relief legislation that would

- promote the use of workplace flexibilities (e.g., telework);
- exempt the DIB from state or local-issued closure of nonessential businesses orders; and
- require Office of Management and Budget (OMB) guidance on providing [reasonable cost adjustments](#) to contractors that are unable to access federal resources required to perform their duties, or otherwise incurring unplanned costs in carrying out contracted activities.

Stakeholders have [called on DOD](#) to take similar steps, such as taking measures to provide DIB entities with sufficient liquid assets and directing contracting officers to consider “financial relief as part of requests for equitable adjustments” for measures taken by contractors to respond to COVID-19.

Case Study: Impact of COVID-19 on Bath Iron Works

The General Dynamics/Bath Iron Works (GD/BIW) shipyard of Bath, Maine produces surface combatant ships for the U.S. Navy. After a GB/BIW shipyard worker tested [positive for COVID-19](#) approximately 40% of the shipyard workforce reported for duty on March 24. [Union leadership](#) have called for the GB/BIW shipyard’s closure, and [state government officials](#) have pressed for flexibility with contract deadlines.

For more information on potential impacts of COVID-19 to [shipbuilding programs, shipyards, supplier firms, and employees](#), see CRS Report RL32665, *Navy Force Structure and Shipbuilding Plans: Background and Issues for Congress*.

Considerations for Congress

The Administration [has taken steps](#) to address industry stakeholders’ concerns, such as recommending [exempting the DIB](#) from state or local-government directed closure of nonessential businesses through the March 19 DHS memorandum and other policy guidance. Congress has also acted through P.L. 116-136, the CARES Act, which included numerous provisions (such as Section 3610) that will benefit the DIB.

Some [Members](#) called on DOD to balance its response by weighing the needs of both the DIB and the DIB workforce. These Members argue that while maintaining production of certain critical capabilities may contribute to U.S. national security in the short term, ensuring the health and safety of a skilled DIB workforce may provide more benefit to national security in the long term.

Some observers have highlighted small business concerns and sub-tiers of the supply chain as the “weakest link” in the DIB, and called for the prioritization of assistance to these entities under [Title III of the Defense Production Act \(DPA\)](#). Title III allows the President to provide economic incentives to secure domestic industrial capabilities essential to meet national defense and homeland security requirements. These incentives, if authorized by the President, may serve to offset the impact of pandemic-related disruptions for DIB small business concerns. These incentives are not subject to monetary limits, making them a potentially more significant assistance mechanism than the smaller-scale [economic injury disaster loans](#) and [other forms of disaster assistance](#) available through the Small Business Administration and other federal entities. Congress may consider providing additional appropriations to the [DPA Fund](#), which is used to carry out Title III DPA activities.

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