



June 2022

# COVID-19 Agencies Increased Use of Some Regulatory Flexibilities and Are Taking Steps to Assess Them

Accessible Version

# GAO Highlight

Highlights of [GAO-22-105047](#), a report to congressional committees

## Why GAO Did This Study

Federal regulations can generate substantial benefits to society, but benefits can diminish if regulations are not adapted to meet emerging public needs. Federal agencies have implemented regulatory flexibilities to address the COVID-19 pandemic's substantial effect. Regulatory flexibilities are actions taken, at least in part, to temporarily reduce regulatory burdens or constraints imposed on regulated entities.

The CARES Act includes a provision for GAO to report on its COVID-19 pandemic oversight efforts. GAO was also asked to look at regulatory flexibilities available to agencies in responding to COVID-19. For this report, GAO examines (1) agencies' implementation of regulatory flexibilities in response to the pandemic; (2) the plans, policies, and other tools selected agencies used to identify and design regulatory flexibilities; and (3) efforts these selected agencies took to assess the impacts of regulatory flexibilities.

To do so, in October 2021, GAO surveyed 24 major federal agencies—those identified in the Chief Financial Officers Act of 1990, as amended—regarding their use of COVID-19 regulatory flexibilities. GAO also interviewed officials at five agencies in part because those agencies reported using more types of flexibilities in response to COVID-19 compared to before the pandemic. GAO interviewed officials about how they identified, designed, and assessed their flexibilities. GAO also reviewed GAO's work related to major agencies' COVID-19 flexibilities, and summarized examples of these flexibilities, as appropriate.

View [GAO-22-105047](#). For more information, contact Yvonne D. Jones at (202) 512-6806 or [JonesY@gao.gov](mailto:JonesY@gao.gov).

June 2022

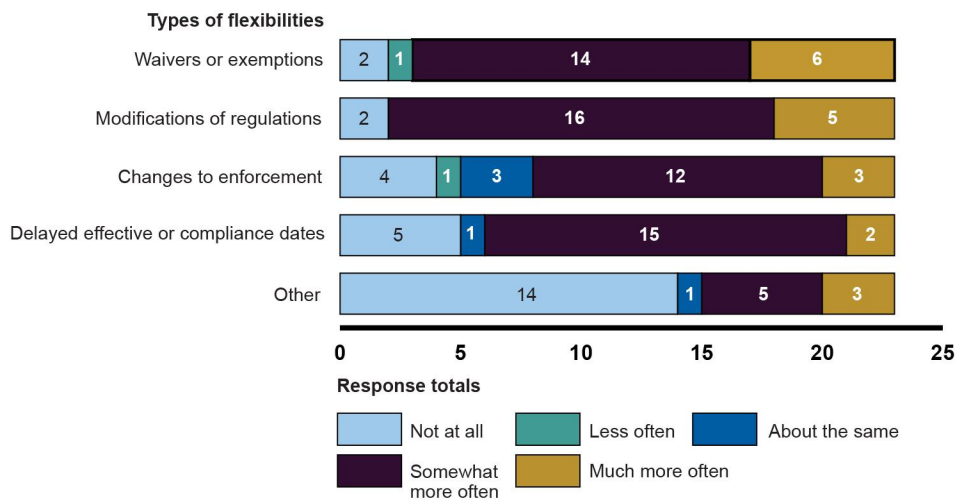
# COVID-19

## Agencies Increased Use of Some Regulatory Flexibilities and Are Taking Steps to Assess Them

### What GAO Found

Twenty-three of 24 major agencies GAO surveyed reported implementing regulatory flexibilities in response to COVID-19. Regulatory flexibilities can include actions that modify regulatory standards, as well as activities that modify their applicability (e.g., through waivers or exemptions) or enforcement. A majority of agencies reported increased use of multiple types of flexibilities in response to COVID-19 compared to before the pandemic (see figure).

### Agencies' Change in Use of Regulatory Flexibilities in Response to the COVID-19 Pandemic



Source: GAO analysis of survey results. | GAO-22-105047

### Accessible Data Table for Highlight Figure

	Other	Delayed effective or compliance dates	Changes to enforcement	Modifications of regulations	Waivers or exemptions
Not at all	14	5	4	2	2
Less often	0	0	1	0	1
About the same	1	1	3	0	0
Somewhat more often	5	15	12	16	14
Much more often	3	2	3	5	6

Officials from each of the five agencies GAO interviewed—the Departments of Energy, Homeland Security, and Transportation, as well as the Environmental Protection Agency and the Small Business Administration—reported designing and implementing flexibilities based on internal expertise developed from prior events. For example, officials reported that their experiences managing Ebola, constrained funding situations, and natural disasters—such as Hurricanes Sandy and Maria—helped them develop responses to COVID-19. Officials from these

agencies stated that they generally did not rely on specific plans, policies, or other tools given the unique challenges posed by COVID-19.

Fifteen of the 24 agencies GAO surveyed reported having already completed an assessment of at least one regulatory flexibility to understand successes or challenges with using them. Ten agencies reported having used at least one such assessment to inform their decision-making, such as whether to modify an existing flexibility or use a new flexibility. Officials from several of the selected agencies reported that their agencies had not conducted assessments of at least one of the flexibilities discussed with GAO. Among reasons why assessments were not conducted, officials said that some flexibilities were intended to be temporary, and that their focus remained on responding to and recovering from the ongoing pandemic.

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### Abbreviations

APA	Administrative Procedure Act
CFO Act	Chief Financial Officers Act of 1990
CMS	Centers for Medicare & Medicaid Services
DHS	Department of Homeland Security
DOD	Department of Defense
DOE	Department of Energy
DOJ	Department of Justice
DOT	Department of Transportation
EPA	Environmental Protection Agency
EUA	emergency use authorization
FAA	Federal Aviation Administration
FDA	Food and Drug Administration
FEMA	Federal Emergency Management Agency
FNS	Food and Nutrition Service
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
NASA	National Aeronautics and Space Administration
OCA	Office of Capital Access
OMB	Office of Management and Budget
PHMSA	Pipeline and Hazardous Materials Safety Administration
PPE	personal protective equipment
SBA	Small Business Administration
USCIS	U.S. Citizenship and Immigration Services
USDA	U.S. Department of Agriculture

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June 23, 2022

### Congressional Committees

While federal regulations can generate substantial benefits to society, benefits can diminish if regulations are not adapted to meet emerging public needs. To address the COVID-19 pandemic’s substantial effect on the nation’s economy and public health, federal agencies have undertaken unprecedented efforts to implement regulatory flexibilities through both the federal rulemaking process and other methods to temporarily reduce requirements.<sup>1</sup>

When rulemaking—the process for formulating, amending, or repealing a regulation—agencies must generally follow certain procedures.<sup>2</sup> These procedures, such as providing notice and soliciting comments from the public, are a means to ensure that the public has an opportunity to provide information to agencies on the potential effects of a rule or to suggest alternatives for agencies to consider.<sup>3</sup>

However, these procedures also take time. In light of the COVID-19 emergency, some agencies have used other implementation methods with fewer procedural requirements, such as issuing interim final rules or

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<sup>1</sup>Regulations are legally binding and typically require a desired action or prohibit certain actions by regulated entities. The *Code of Federal Regulations* annual edition is the codification of the general and permanent rules published in the *Federal Register* by agencies of the federal government. We use the terms regulations and rules interchangeably in this report.

<sup>2</sup>The Administrative Procedure Act (APA) describes two types of rulemaking: formal and informal. Most federal agencies use the informal rulemaking process, which is also referred to as notice-and-comment rulemaking. We are referring to the informal rulemaking process in this report when we discuss notice-and-comment rulemaking.

<sup>3</sup>The APA established broadly applicable requirements for informal rulemaking, also known as notice-and-comment rulemaking. 5 U.S.C. § 553. Among other things, agencies are generally required to provide the public with notice in the *Federal Register* of a proposed rulemaking and give the public an opportunity to submit comments on the proposed rule. After considering the public comments received, the agency may then publish the final regulation.

guidance, to address emerging needs.<sup>4</sup> Understanding more about agencies' experiences identifying, designing, and assessing regulatory flexibilities could help them continue responding to the ongoing pandemic and better prepare for future emergencies.

The CARES Act includes a provision for us to report on our ongoing monitoring and oversight efforts related to the COVID-19 pandemic.<sup>5</sup> This report is a part of that body of work.<sup>6</sup> We were also asked to look at federal regulatory flexibilities that were available to allow agencies to effectively and efficiently respond to COVID-19. In this report, we describe (1) to what extent selected agencies implemented regulatory flexibilities in response to the COVID-19 pandemic; (2) what plans, policies, and other tools selected agencies used to identify and design regulatory flexibilities; and (3) what efforts selected agencies have taken to assess the impacts of regulatory flexibilities and identify lessons learned.

For the purposes of this report, we define regulatory flexibilities as actions agencies take, at least in part, to temporarily reduce regulatory burdens or constraints imposed on those affected by the regulations.<sup>7</sup> Regulatory flexibilities can include actions that modify regulatory standards themselves, as well as activities that modify their applicability (e.g., through waivers or exemptions) or enforcement (e.g., by giving inspection staff flexibility on how to address noncompliance). Regulatory flexibilities may be based on a range of legal authorities, from existing regulatory or

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<sup>4</sup>The APA permits agencies to issue final rules without publishing a notice of proposed rulemaking in certain cases, including when the agency determines for "good cause" that notice-and-comment procedures are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(B). Legislation may also permit an agency to issue regulations without first going through notice-and-comment procedures. One type of rule issued without a notice of proposed rulemaking is the interim final rule. These rules are generally effective immediately but can provide an opportunity for public comment after the rule's issuance.

<sup>5</sup>Pub. L. No. 116-136, § 19010, 134 Stat. 281, 579-81 (2020).

<sup>6</sup>We have regularly issued government-wide reports on the federal response to the COVID-19 pandemic. For the latest report, see GAO, *COVID-19: Current and Future Federal Preparedness Requires Fixes to Improve Health Data and Address Improper Payments*, GAO-22-105397 (Washington, D.C.: Apr. 27, 2022). Our other government-wide reports are available at <https://www.gao.gov/coronavirus>.

<sup>7</sup>Regulatory burden refers to the costs associated with government regulations and their implementation.



statutory authorities to COVID-19-related statutory (and executive order) authorities or requirements.<sup>8</sup>

To describe to what extent regulatory flexibilities have been implemented in response to the COVID-19 pandemic, we administered a survey to 24 major federal agencies.<sup>9</sup> We emailed questionnaires to agencies in October 2021 and requested that they coordinate internally across their components to provide one comprehensive agency response.<sup>10</sup> We received responses from all 24 major agencies.<sup>11</sup>

To describe the plans, policies, and other tools selected agencies used to identify, design, and assess flexibilities, we interviewed officials at five selected agencies: the Departments of Energy (DOE), Homeland Security (DHS), and Transportation (DOT) as well as the Environmental Protection Agency (EPA) and the Small Business Administration (SBA). We selected these agencies based in part on their survey responses, which reported increased use of different flexibility types and implementation methods in response to COVID-19, as well as variations in agency efforts to assess implemented flexibilities. Additionally, for all three objectives, we reviewed and summarized findings from our issued work related to flexibilities, including regulatory flexibilities, the major agencies have implemented in

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<sup>8</sup>We exclude from coverage the use of grants management flexibilities authorized by the Office of Management and Budget (OMB) for agencies in 2020 and 2021. See appendix I for more information on the OMB memorandums that identify and authorize these flexibilities. For information on how OMB and agencies developed and implemented COVID-19-related grant flexibilities, see GAO, *Grants Management: OMB Should Collect and Share Lessons Learned from Use of COVID-19 Related Grant Flexibilities*, [GAO-21-318](#) (Washington, D.C.: Mar. 31, 2021).

<sup>9</sup>The 24 agencies are those identified in the Chief Financial Officers (CFO) Act of 1990, as amended. 31 U.S.C. § 901(b). The 24 CFO Act agencies are the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, and Veterans Affairs; National Aeronautics and Space Administration; Environmental Protection Agency; U.S. Agency for International Development; General Services Administration; National Science Foundation; Nuclear Regulatory Commission; Office of Personnel Management; Small Business Administration; and Social Security Administration.

<sup>10</sup>Agencies were given discretion with how they coordinated internally across their own components and provided one comprehensive response for their agency. For example, an agency may have reported the “average” response across all of its components, or the “highest” response reported by an individual component.

<sup>11</sup>Agencies’ survey responses and other information provided to us may have included actions that are not “regulatory flexibilities” as defined by our methodology. For the purposes of this report, we use agencies’ classifications of these actions.

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response to the pandemic. See appendix I for a more detailed description of our scope and methodology and appendix II for a list of our other work related to COVID-19 flexibilities.

We conducted this performance audit from March 2021 to June 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### Opportunities to Implement Regulatory Flexibilities in Response to COVID-19

Agencies typically have discretion when promulgating regulations to implement laws and achieve national goals. In response to the COVID-19 pandemic, Congress provided additional authority to various agencies to implement regulatory flexibilities. In addition, the pandemic has further provided agencies with the opportunity to implement flexibilities only authorized in certain emergency situations.

- **Flexibilities authorized by COVID-19 congressional action.** Congress passed and the president signed into law six COVID-19 relief laws to address the public health and economic threats posed by COVID-19.<sup>12</sup> As of March 2022, the six relief laws had provided a total of about \$4.6 trillion toward such efforts. Agencies' efforts to implement the relief laws have included distributing funding and implementing new programs. In addition to providing funding and authorizing new programs under the COVID-19 relief laws, Congress provided various agencies with authority to temporarily reduce

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<sup>12</sup>For the purposes of our review, we consider COVID-19 relief laws to include the six laws providing comprehensive relief across federal agencies and programs. These six laws are the American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4; Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020); Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620 (2020); CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020); Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020); and the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Pub. L. No. 116-123, 134 Stat. 146.

regulatory burdens or constraints on regulated entities. Affected programs and activities include those related to nutrition assistance, certain tax benefits, including credits and deductions, and business loans, among others.

- **Flexibilities authorized by emergency declarations and authorities.** On January 31, 2020, the Secretary of Health and Human Services (HHS) declared a public health emergency in response to COVID-19 under section 319 of the Public Health Service Act.<sup>13</sup> Subsequently on March 13, 2020, the President declared a national emergency under the National Emergencies Act and a nationwide emergency under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).<sup>14</sup> These acts authorize specified executive branch officials to determine that an emergency exists and, as a consequence of that determination, various statutory authorities only available under such circumstances may be used.<sup>15</sup> For example, when both a public health emergency and either a disaster or emergency have been declared under the National Emergencies Act or Stafford Act, section 1135 of the Social Security Act authorizes the Secretary of HHS to temporarily waive or modify certain federal health care requirements, including in the Medicare Program, to increase access to medical services.<sup>16</sup>

As agency policymakers have leveraged existing and new authorities to respond to COVID-19, they have also received and may solicit input and direction from different sources to guide them in their decision-making.

- **Input from the regulated community, the public, and other interested parties.** As agencies assess the pandemic's far-reaching effects and options for mitigating them, they may use established processes, such as notice-and-comment rulemaking, as well as informal mechanisms, such as stakeholder meetings, to obtain input from the regulated community, the public, and other interested parties.

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<sup>13</sup>42 U.S.C. § 247d.

<sup>14</sup>See 50 U.S.C. § 1601 et seq. and 42 U.S.C. § 5121 et seq.

<sup>15</sup>The Congressional Research Service has developed a list of statutory authorities triggered when an emergency is declared under each authority. See Congressional Research Service, *Emergency Authorities Under the National Emergencies Act, Stafford Act, and Public Health Service Act*, R46379 (Washington, D.C.: July 14, 2020).

<sup>16</sup>See 42 U.S.C. § 1320b-5.

- **Presidential direction.** Both the current and prior administrations have taken steps to guide agencies' efforts to respond to COVID-19. The Biden administration issued a *National Strategy for the COVID-19 Response and Pandemic Preparedness* identifying strategic goals and key actions for agencies related to ensuring access to personal protective equipment and treatment, expanding emergency relief, and advancing equity.<sup>17</sup> Consistent with these goals, the President has also issued numerous executive orders, including one directing agencies to use all available legal authorities, including the Defense Production Act, to fill shortfalls in the provision of pandemic response supplies.<sup>18</sup> The Trump administration also issued an executive order directing agencies to, among other things, aid the economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery.<sup>19</sup>
- **Agency response plans.** Agencies developed emergency preparedness plans and policies prior to and during COVID-19 to help respond to and recover from COVID-19 and other public health emergencies.

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## Types of Regulatory Flexibilities and Methods for Implementation

Under their own discretion and the authorities described above, among others, agencies may use several types of regulatory flexibilities in response to the pandemic, including:

- **Waivers or exemptions.** Agencies may waive or provide exemptions from certain requirements that may be prudent during nonemergencies if, for example, an emergency makes it impossible or impracticable to comply with those requirements.

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<sup>17</sup>White House, *National Strategy for the COVID-19 Response and Pandemic Preparedness* (Jan. 21, 2021).

<sup>18</sup>Exec. Order No. 14001, *A Sustainable Public Health Supply Chain*, 86 Fed. Reg. 7219 (Jan. 26, 2021).

<sup>19</sup>Exec. Order No. 13924, *Regulatory Relief to Support the Economic Recovery*, 85 Fed. Reg. 31353 (May 19, 2020). This executive order was subsequently revoked by President Biden on February 24, 2021. See, Exec. Order No. 14018, *Revocation of Certain Presidential Actions*, 86 Fed. Reg. 11855.

- **Modifications of regulations.** Agencies may modify existing regulations for a variety of reasons related to COVID-19, including to reduce burdens on the public.
- **Changes to enforcement.** Agencies may modify their enforcement practices to include more flexibility to help respond to and recover from COVID-19.
- **Delayed effective or compliance dates.** Agencies may delay certain dates, such as the date a regulation goes into effect or the date regulated entities have to comply with certain regulatory requirements.

Agencies may use several methods to implement flexibilities, including:

- **Notice-and-comment rulemaking.** Agencies may use notice-and-comment rulemaking procedures to create new regulatory requirements, and to modify or repeal existing rules.
- **Interim final rules.** Agencies may issue different types of rules that vary from the notice- and-comment rulemaking process, including interim final rules, which go into effect without a prior notice if the agency finds that it has good cause to do so.
- **Guidance.** Agencies may issue guidance documents to explain how they plan to interpret regulations, to address circumstances they could not have anticipated when issuing regulations, or, when necessary, to make additional clarifications. Guidance documents differ from regulations in that they are not legally binding.
- **Approval or grant of regulatory relief.** Agencies may use their existing discretion to offer relief from, or nonenforcement of, regulatory requirements such as through the use of waivers or exemptions outside of the rulemaking process.

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## Nearly All Agencies Reported Implementing Different Types of Regulatory Flexibilities

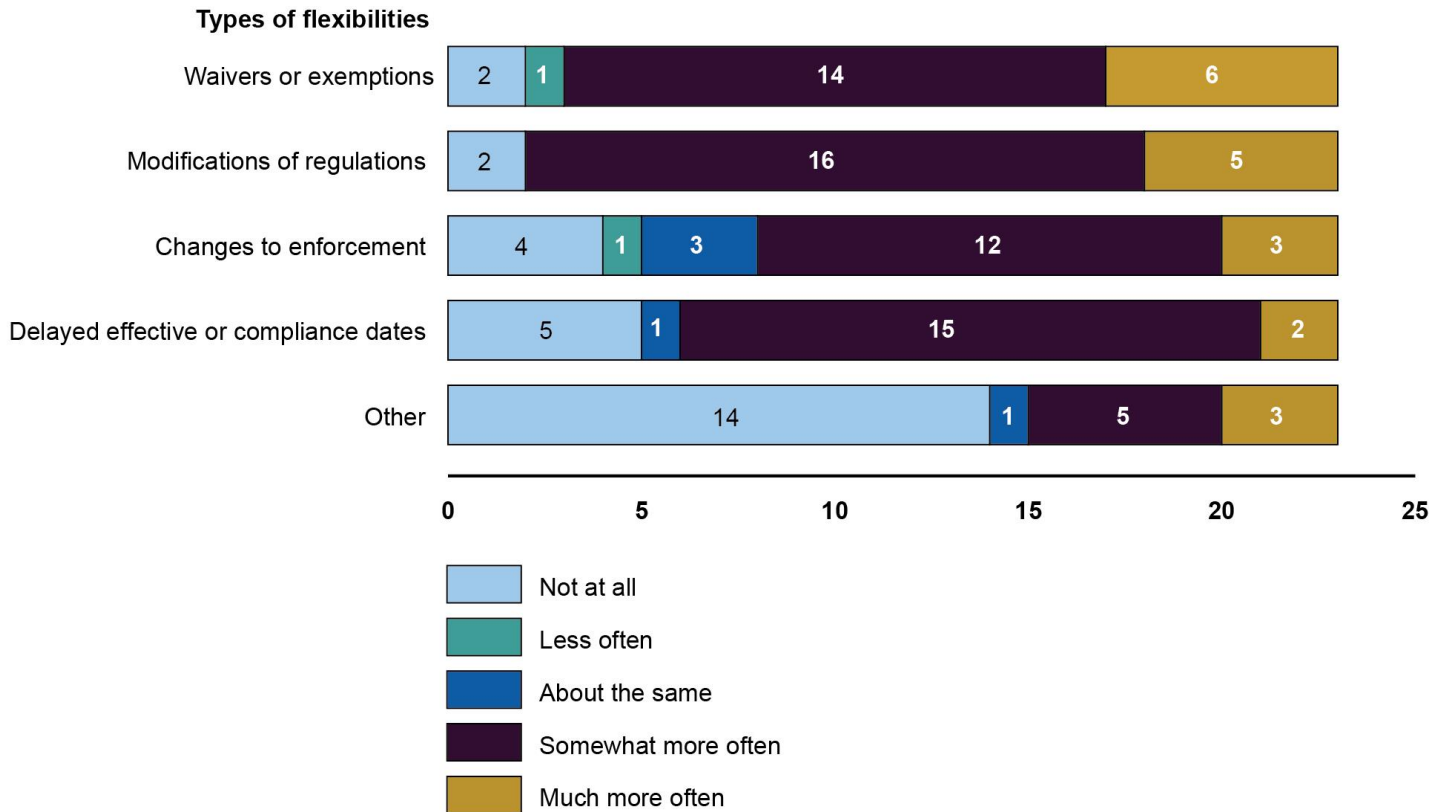
Twenty-three of the 24 agencies we surveyed reported implementing regulatory flexibilities in response to the COVID-19 pandemic.<sup>20</sup> Among

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<sup>20</sup>The National Aeronautics and Space Administration (NASA) responded to our survey that it had not implemented any regulatory flexibilities. NASA reported that it is not a regulatory agency. Thus, it did not issue any regulations in response to the COVID-19 pandemic that would have affected the general public. According to agency officials, NASA's COVID-19 response efforts were focused on protecting its workforce and maintaining continuity of operations while working in both an on-site and remote capacity.

these 23 agencies, a majority reported using multiple types of flexibilities somewhat or much more often compared to their use of these flexibilities before the pandemic. For example, 20 agencies reported using more waivers or exemptions while 21 agencies reported using more modifications of regulations than before the pandemic (see fig. 1). In addition, 15 agencies reported using more changes to enforcement and 17 reported delaying effective or compliance dates somewhat or much more often than before the pandemic.

**Figure 1: Agencies' Use of Different Regulatory Flexibility Types in Response to the COVID-19 Pandemic Compared to Use before the Pandemic**



Source: GAO analysis of survey results. | GAO-22-105047

**Accessible Data Table for Figure 1**

	Other	Delayed effective or compliance dates	Changes to enforcement	Modifications of regulations	Waivers or exemptions
Not at all	14	5	4	2	2
Less often	0	0	1	0	1
About the same	1	1	3	0	0
Somewhat more often	5	15	12	16	14
Much more often	3	2	3	5	6

Throughout this report, we provide examples of flexibilities agencies implemented. Generally, these flexibilities targeted the following four major categories of assistance or relief: (1) public health, (2) individuals, (3) the economy, and (4) states and tribes. For example, the U.S. Department of Agriculture’s Food and Nutrition Service granted waiver flexibilities that provided assistance to individuals, as described in the text box below.<sup>21</sup>

**Food and Nutrition Service (FNS) School Meal Provision Waivers**



The U.S. Department of Agriculture’s FNS granted various nationwide waivers in response to pandemic-related school closures that began in spring 2020 to facilitate meal provision while limiting potential COVID-19 exposure. For example, these waivers allowed meals to be served in noncongregate settings, enabled parent and guardian meal pickup, and provided flexibility in foods served and meal times. In addition to granting the various waiver flexibilities, in spring 2020, FNS began allowing schools and other meal providers to operate under summer meal programs. FNS waived the requirement that summer meal sites providing free meals to all children be located in areas where at least half of the children are from low-income households. This waiver expanded the population of children

<sup>21</sup>GAO, *COVID-19: Additional Actions Needed to Improve Accountability and Program Effectiveness of Federal Response*, [GAO-22-105051](#) (Washington, D.C.: Oct. 27, 2021); and GAO, *COVID-19: Continued Attention Needed to Enhance Federal Preparedness, Response, Service Delivery, and Program Integrity*, [GAO-21-551](#) (Washington, D.C.: Jul. 19, 2021).

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eligible for free meals, which eased the administrative burden of tracking and collecting payment for school meals while maintaining social distancing guidelines.

Source: GAO-21-551 and GAO-22-105051. | GAO-22-105047

Some agencies implemented “other” types of flexibilities in response to the pandemic that they considered to be distinct from the types of flexibilities mentioned above.<sup>22</sup> For example:

- The Department of Housing and Urban Development (HUD) reported that it issued several notices waiving and providing alternatives to statutory and regulatory requirements to enable it to continue to provide affordable and safe housing during the pandemic. HUD categorized these under the “other” category in our survey. One such notice waived the requirement to obtain and verify social security number documentation before admitting applicants to certain housing programs. As an alternative requirement, individuals admitted under the waiver were given an additional 90 days to provide required documentation to be eligible for continued assistance.
- The Department of Education reported that its Office of Federal Student Aid offered numerous flexibilities to accommodate students and help them continue their educations despite interruptions caused by the pandemic. For example, Education provided broad approval to postsecondary institutions to use distance learning-methods without going through the standard approval process.

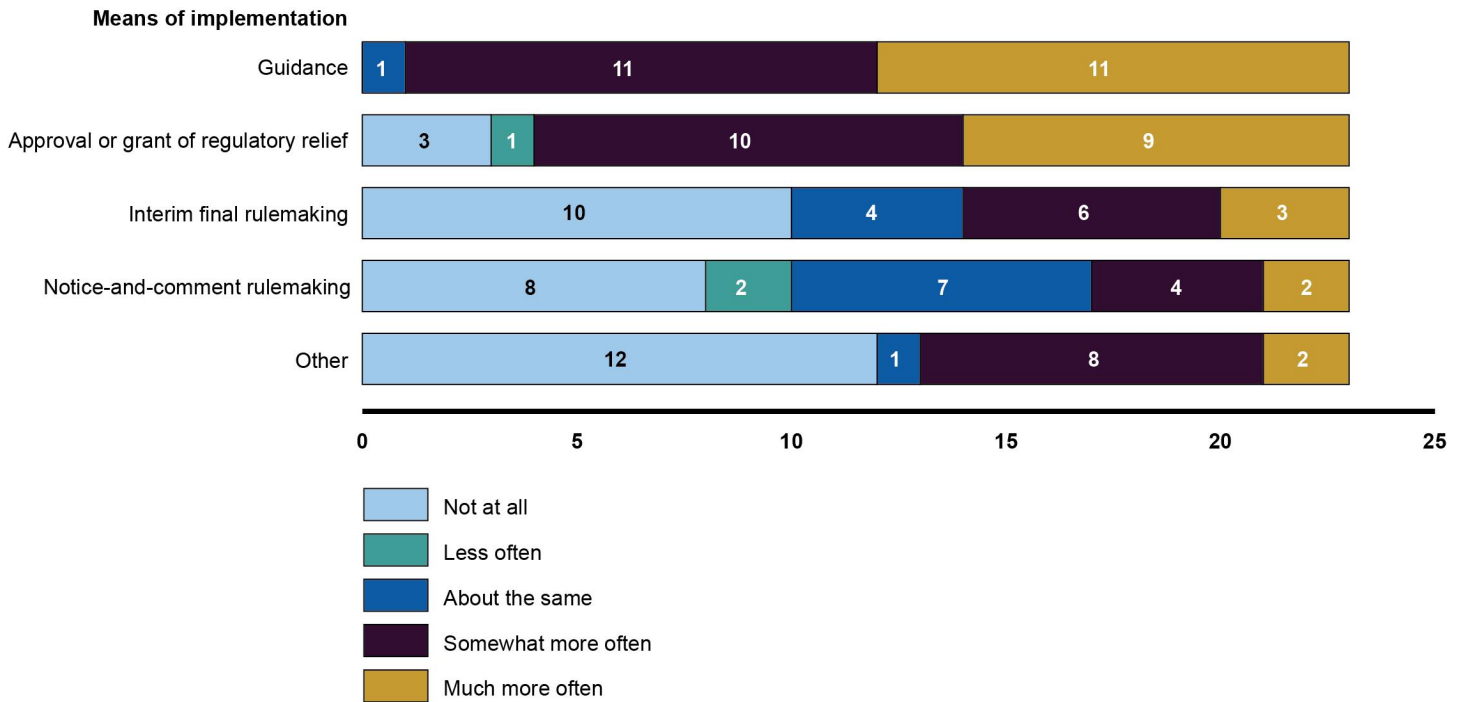
A greater number of agencies reported increased implementation of regulatory flexibilities through guidance, approvals or grants of regulatory relief, interim final rules, or other methods than through the notice-and-comment rulemaking process (see fig. 2).

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<sup>22</sup>While the examples of “other” types of flexibilities agencies reported to us may fit under different categories of flexibilities provided in our survey response options (e.g., waivers or exemptions), for the purposes of this report, we refer to the agency’s reported classification of their own flexibilities.



**Figure 2: Agencies' Use of Different Regulatory Flexibility Implementation Methods in Response to the COVID-19 Pandemic Compared to Use before the Pandemic**



Source: GAO analysis of survey results. | GAO-22-105047

**Accessible Data Table for Figure 2**

	Other	Notice-and-comment rulemaking	Interim final rulemaking	Approval or grant of regulatory relief	Guidance
Not at all	12	8	10	3	0
Less often	0	2	0	1	0
About the same	1	7	4	0	1
Somewhat more often	8	4	6	10	11
Much more often	2	2	3	9	11

Twenty-two of the 24 agencies reported implementing flexibilities through the issuance of guidance at least somewhat or much more often, with only one agency reporting that it did so about the same as before the pandemic. Guidance documents provide agencies flexibility to articulate their interpretations of regulations, clarify policies, and address new issues more quickly than may be possible using notice-and-comment rulemaking. Agencies can issue and revoke guidance more quickly, using fewer agency resources and with less public involvement as compared to the rulemaking process for formulating, amending, or repealing

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regulations. However, as noted above, guidance is not legally binding whereas regulations are legally binding. The text box below provides an example of DOT using guidance to address the shortage of hand sanitizer early in the pandemic.

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**Pipeline and Hazardous Materials Safety Administration (PHMSA)  
Enforcement Guidance**



**Federal Aviation Administration (FAA) Regulatory Relief Actions**



The Department of Transportation’s FAA reported taking quick action to help the aviation industry adjust operations in response to the pandemic. These actions included providing temporary relief from some regulatory requirements, including training, testing, qualification, and medical certification requirements pertaining to pilots, mechanics, and dispatchers. The relief allowed the continued use of pilots and other crewmembers in support of essential operations, and also made it easier for operators to move aircraft from one storage facility to another.

Source: GAO analysis of April 2020 DOT temporary relief notice and interview with DOT officials. | GAO-22-105047

Twenty agencies also reported implementing approvals or grants of regulatory relief in response to the pandemic, with all but one reporting having done so more frequently compared to before the pandemic. For example, the DOT’s Federal Aviation Administration provided airlines and other aviation sectors temporary relief from some regulatory requirements (see text box below).<sup>23</sup>

Source: GAO-22-104429. | GAO-22-105047

Nine agencies reported that they implemented flexibilities using interim final rules at least somewhat more often in response to the pandemic than before, compared to six agencies that reported increased

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<sup>23</sup>GAO, *COVID-19 Pandemic: Observations on the Ongoing Recovery of the Aviation Industry*, GAO-22-104429 (Washington, D.C.: Oct. 21, 2021).

implementation of flexibilities through notice-and-comment rules.<sup>24</sup> As noted earlier, an interim final rule becomes effective without a notice of proposed rulemaking, but the public generally may provide comments after the rule's issuance. DOT officials we interviewed said that the longer time required to promulgate notice-and-comment rules may not have afforded agencies sufficient time to use this method to respond effectively to the pandemic.

Finally, 11 agencies reported implementing flexibilities through "other" methods, such as through the issuance of policy bulletins and FAQs, which they considered to be distinct from guidance and the previous implementation methods discussed above. In addition, the Social Security Administration and DHS reported implementing flexibilities through temporary final rules. According to DHS officials we spoke with, temporary final rules, like interim final rules, go into effect without a prior notice but are usually of a short duration and have a specified termination date.

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## Selected Agencies Reported Identifying and Designing Flexibilities Internally and in Consultation with External Stakeholders

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### Internal Expertise

Officials from each of the five selected agencies (DOE, DHS, DOT, EPA, and SBA) described how internal expertise from lessons learned from prior disasters, public-health emergencies, and other events helped inform their decision-making when designing and implementing flexibilities in response to the pandemic. According to officials at the selected agencies, agency staff often identified certain pandemic-related issues and then used their expertise to develop solutions. For example:

- Officials from DOT stated that they used lessons learned from addressing Ebola cases in the U.S. as a guide to assist inexperienced private sector entities with managing issues around a novel illness

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<sup>24</sup>We previously reported on agencies' use of interim final rules prior to the pandemic. In 2012, we reported that between 2003 through 2010, agencies published about 4 (plus or minus 2) percent of nonmajor rules and 15 percent (actual) of all major rules as interim rules. GAO, *Federal Rulemaking: Agencies Could Take Additional Steps to Respond to Public Comments*, [GAO-13-21](#) (Washington, D.C.: Dec. 20, 2012).

spreading in the U.S. The onset of the pandemic saw widespread shortages in products that can help mitigate the spread of COVID-19, such as hand sanitizer. DOT's experience with responding to Ebola helped officials implement a flexibility for the transportation of hand sanitizer from new manufacturers with little experience in meeting DOT hazardous materials shipping requirements.

- DOE officials said that their experience in preparing for and managing multiple government shutdowns and the resulting loss of funding assisted them in their ability to continue operations with fewer staff onsite during the pandemic. DOE implemented numerous flexibilities that temporarily suspended enforcement actions for violations of not meeting certain safety and security requirements, such as testing and training, which would have been difficult to meet due to COVID-19.
- EPA officials from the Office of Superfund Remediation and Technology Innovation stated that they used past experience regarding funding and staffing constraints to help guide their community involvement efforts. Officials used a previously developed long-distance engagement guide to pivot to relying on virtual technology to conduct their community involvement efforts during the pandemic.
- DHS's Federal Emergency Management Agency (FEMA) officials said that they used their experience from prior disasters such as Hurricane Maria to implement a flexibility that simplified the application for FEMA's Public Assistance Program.<sup>25</sup> According to officials, while the idea of simplifying the entire application process was new, it was designed based on a pilot used in prior disasters. The simplified process allowed applicants to avoid previously required in-person consultations with FEMA and significantly decreased the amount of time it took applicants to receive aid.
- SBA's Office of Disaster Assistance officials stated that they had experience from addressing small business needs after Hurricane Sandy. SBA expanded the use of a flexibility previously used after Hurricane Sandy regarding the waiving of some credit score

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<sup>25</sup>While the agency took this action to reduce burdens or constraints on those affected by COVID-19, it did not modify any existing regulatory standards, applicability, or enforcement. Thus, it does not fully meet our definition of a regulatory flexibility.

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requirements to speed up pandemic-related loan application reviews.<sup>26</sup>

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## External Stakeholders

Officials from four of the selected agencies stated that in several instances external stakeholders identified or provided feedback on pandemic-related issues that were addressed through the use of flexibilities. For example, DOT officials stated that a letter from a professional organization to the President identified an issue with how restaurant closures due to the pandemic were affecting the trucking industry and the ability of drivers to obtain meals. DOT subsequently exercised its enforcement discretion to notify state-level Departments of Transportation that DOT would not take action if a state allowed limited commercial activity (i.e., food trucks) at Interstate Highway rest areas, thereby increasing the availability of meals to drivers.

In addition, EPA officials from the Office of Land and Emergency Management stated that they heard from hazardous waste handlers who expressed concerns about their ability to practice social distancing during interactions with customers. EPA subsequently exercised its enforcement discretion and temporarily allowed handlers and customers—generators of hazardous waste—flexibility with respect to providing a required handwritten signature on a paper hazardous waste manifest.

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## Trade-Offs Considered and Plans Used in Designing Flexibilities

Officials from selected agencies also told us they attempted to balance trade-offs and risk when designing flexibilities. For example, officials from DHS' U.S. Citizenship and Immigration Services (USCIS) stated that the agency temporarily revised a requirement that non-English-speaking asylum applicants must provide their own interpreters, and instead required USCIS to conduct asylum interviews with government-provided telephonic interpreters. According to officials, while this flexibility helped workers and asylum applicants maintain social distancing and safety, officials identified trade-offs to not having an in-person interpreter,

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<sup>26</sup>While the agency took this action to reduce burdens or constraints on those affected by COVID-19, it did not modify any existing regulatory standards, applicability, or enforcement. Thus, it does not fully meet our definition of a regulatory flexibility.

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including a reduction in officers' abilities to observe interactions between the interpreter and applicant.

Officials from the five selected agencies we spoke with generally stated that they did not rely on any specific plans, policies, or other tools to identify and design flexibilities. The unique nature of the pandemic had many unanticipated effects that, while in some cases similar to prior disasters, required agencies to take unprecedented actions as the pandemic progressed.

While our five selected agencies generally did not describe using specific plans, other federal agencies, including the Food and Drug Administration (FDA) and the Centers for Medicare & Medicaid Services (CMS), developed COVID-19-specific plans and policies, which include the use of flexibilities. For example, CMS' Pandemic Plan details the use of waivers and other flexibilities to enable more health care providers and beneficiaries to supply and access care. As described in the text box below, this plan includes the use of Medicare telehealth waivers.<sup>27</sup>

### **Centers for Medicare & Medicaid Services (CMS) Medicare Telehealth Waivers**



Over the course of the pandemic, the Department of Health and Human Services' (HHS) CMS issued a number of waivers to expand access to telehealth services. Telehealth services allow the provision of certain types of medical care remotely, helping to reduce the spread of COVID-19. These waivers allow for more providers to offer telehealth services on a wider range of medical issues and receive reimbursement from Medicare. According to HHS officials, Medicaid telehealth policies did not require the use of waivers and are not dependent on Medicare telehealth.

Source: [GAO-21-191](#). | [GAO-22-105047](#)

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<sup>27</sup>GAO, *COVID-19: Urgent Actions Needed to Better Ensure an Effective Federal Response*, [GAO-21-191](#) (Washington, D.C.: Nov. 30, 2020). Medicaid, a federal-state program that finances health care for certain low-income and medically needy individuals, also expanded its use of telehealth. See GAO, *Medicaid: CMS Should Assess Effect of Increased Telehealth Use on Beneficiaries' Quality of Care* [GAO-22-104700](#) (Washington, D.C.: Mar. 31, 2022).

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## Some Agencies Have Taken Steps or Plan to Assess Effectiveness of Regulatory Flexibilities

A majority of major agencies (15 of 24) reported that they had completed an assessment of at least one regulatory flexibility implemented in response to COVID-19.<sup>28</sup> Of these agencies, 10 reported that they had used the results of at least one completed assessment to inform their decision-making, as shown in figure 3 below.<sup>29</sup> The remaining five reported that they had completed at least one assessment but had yet to use the results to inform agency decisions.

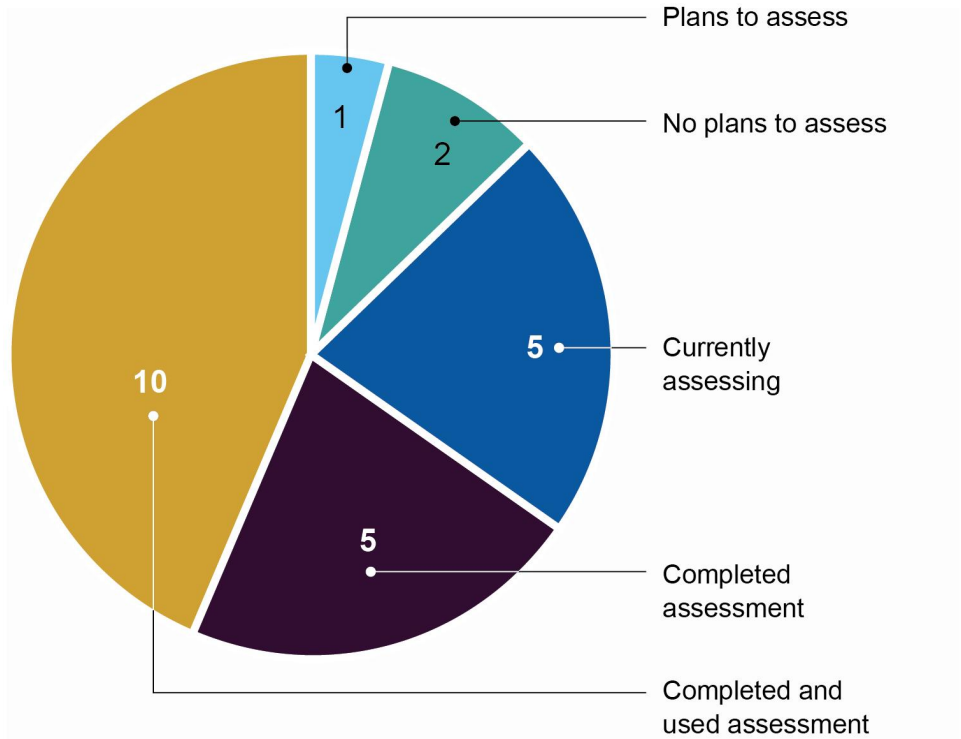
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<sup>28</sup>The survey was administered to the 24 major agencies in October 2021. For the purposes of this report, we consider assessments to be the gathering of quantitative or qualitative evidence to understand successes or challenges around the use of regulatory flexibilities.

<sup>29</sup>We asked agencies to consider whether they had used an assessment to inform agency decisions to (1) modify or discontinue flexibilities already used, (2) decide whether and how to use new regulatory flexibilities, or (3) seek statutory reform.



**Figure 3: Agencies' Highest-Reported Progress in Assessing Regulatory Flexibilities in Response to the COVID-19 Pandemic**



Source: GAO analysis of survey results. | GAO-22-105047

**Accessible Data Table for Figure 3**

No plans to assess	Plans to assess	Currently assessing	Completed assessment	Completed and used assessment
2	1	5	5	10

Notes: We consider an assessment of the agency's use of regulatory flexibilities to include the gathering of quantitative or qualitative evidence to understand successes or challenges. Agencies may use an assessment to inform their decisions to (1) modify or discontinue flexibilities already used, (2) decide whether and how to use new regulatory flexibilities, or (3) seek statutory reform. We asked the agencies to identify all assessment efforts, if any, of regulatory flexibilities they had implemented in response to COVID-19, which could include planned, in progress, completed, and used assessments. For the purposes of this figure, we report the highest assessment progress reported by each agency from the survey administered to agencies in October 2021.

The National Aeronautics and Space Administration (NASA) is the only major agency not included in the figure because the agency noted that NASA is not a regulatory agency. Thus, it did not issue any regulation changes related to COVID-19 that would have affected the general public.

Additionally, five of the 24 agencies reported that they were currently assessing at least one flexibility but had not yet completed an assessment. Only two major agencies that reported implementing flexibilities—the Department of the Interior and the U.S. Agency for

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International Development—reported that they either have not conducted or do not have plans to conduct assessments of any of their implemented flexibilities.<sup>30</sup>

Our published work has identified opportunities for some major agencies, such as the Departments of Labor and Health and Human Services, to improve oversight and tracking of flexibilities implemented in response to COVID-19 (see text boxes below).<sup>31</sup>

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<sup>30</sup>Aside from our five selected agencies, we did not follow-up with the other agencies we surveyed regarding their responses. As such, we did not speak to either agency about why they do not have plans to conduct an assessment of their implemented flexibilities.

<sup>31</sup>GAO, *COVID-19: Critical Vaccine Distribution, Supply Chain, Program Integrity, and Other Challenges Required Focused Federal Attention*, [GAO-21-265](#) (Washington, D.C.: Jan. 28, 2021); and, *COVID-19: Federal Efforts Accelerate Vaccine and Therapeutic Development, but More Transparency Needed on Emergency Use Authorizations*, [GAO-21-207](#) (Washington, D.C.: Nov. 17, 2020).

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## Occupational Safety and Health Administration (OSHA) Enforcement Methods Adapted



To help protect the Department of Labor's OSHA employees from the virus and address resource constraints, OSHA temporarily granted area offices increased discretion to conduct enforcement via remote inspections and informal inquiries in place of on-site inspections. Area offices also were given flexibility to determine whether to issue citations when they identify certain workplace violations. For example, area offices had the discretion to consider employers' good faith efforts when determining whether to issue citations if they observed violations of certain personal protective equipment (PPE) or recordkeeping requirements. This discretion took into account potential PPE shortages and challenges in determining whether a COVID-19 case was work related. In December 2021, OSHA officials told us that the agency plans to conduct an overall assessment of its efforts during the pandemic once the pandemic no longer affects OSHA's enforcement activities, and that this assessment will include an analysis of the agency's use of remote inspections and informal inquiries.

Source: [GAO-21-265](#). | GAO-22-105047

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**Food and Drug Administration (FDA) Guidance on Emergency Use Authorization for COVID-19 Vaccines**



The Department of Health and Human Services' FDA may temporarily allow the use of unlicensed or unapproved vaccines and therapeutics through emergency use authorizations (EUA), provided there is evidence that the products may be effective and that known and potential benefits outweigh known and potential risks. FDA issued guidance in October 2020 to provide vaccine sponsors with recommendations regarding the manufacturing, safety, and effectiveness data and information needed to support issuance of an EUA for a COVID-19 vaccine. In November 2020, we recommended that FDA identify ways to uniformly disclose to the public the information from its scientific review of safety and effectiveness data when issuing EUAs for therapeutics and vaccines. In response to our recommendation, FDA developed a process to disclose its scientific review documents for therapeutic EUAs. FDA also released summaries disclosing information used to support three therapeutic EUAs and decision memorandums containing detailed information

Source: [GAO-21-207](#) | [GAO-22-105047](#)

EPA officials told us they completed a formal assessment of at least one of the implemented flexibilities we discussed with them.<sup>32</sup> According to EPA officials, they assessed the effectiveness of a flexibility related to the use of virtual technology for community meetings and found that the use of the virtual technology led to greater attendance from the public and reduced agency costs. However, EPA officials also identified that some individuals may have limited or no access to the internet or other technologies for community meetings and thus should take steps as practicable to provide access through other means.

DHS, DOE, DOT, and SBA all reported in their survey responses that they had either completed an assessment of at least one regulatory flexibility, or completed and used an assessment in their decision-making. However, officials from each of these agencies told us that they had yet to conduct an assessment for at least one of the flexibilities selected for

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<sup>32</sup>We asked each selected agency to choose a sample of four flexibilities to discuss with us. As a result, the flexibility examples each agency shared with us are illustrative in nature and may not reflect the status of the overall assessment activities reported by agencies in their survey responses.

discussion with us. According to several agency officials, they had not conducted assessments of some flexibilities, including those they discussed with us, because their focus generally remained on responding to and recovering from the pandemic, rather than conducting assessments.

Rather than conducting formal assessments, officials from some of the selected agencies generally stated that after the implementation of a flexibility, they obtained feedback and monitored its effectiveness as the pandemic progressed. For example, officials from DOT's U.S. Maritime Administration reported finalizing an interim rule that provided flexibility for standardized testing requirements for admission to its Merchant Marine Academy after reviewing the outcome of this flexibility.<sup>33</sup> Officials from DHS' FEMA also stated that they have taken preliminary steps to evaluate the effectiveness of a flexibility that streamlined disaster aid by allowing applicants to apply directly for assistance in place of assigning a program delivery manager to collect an applicant's information in person, and found that the flexibility significantly reduced overall processing times.<sup>34</sup>

Where appropriate, agencies may be able to use an assessment of selected regulatory flexibilities implemented in response to COVID-19 to determine the benefits they provided or how those flexibilities contributed to specific goals and whether those flexibilities should be modified, made permanent, or both.<sup>35</sup> Congress and administrations have imposed analytical requirements on the regulatory process, including periodic retrospective reviews, because of regulations' potentially substantial costs

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<sup>33</sup>The final rule was issued on April 22, 2021. See *Admission and Training of Midshipman at the United States Merchant Marine Academy; Amendment Providing an Emergency Waiver for Scholastic Requirements*, 86 Fed. Reg. 21213 (2021), codified at 46 C.F.R. § 310.55(d).

<sup>34</sup>While the agency took this action to reduce burdens or constraints on those affected by COVID-19, it did not modify any existing regulatory standards, applicability, or enforcement. Thus, it does not fully meet our definition of a regulatory flexibility.

<sup>35</sup>We have previously reported on the scope, effectiveness, and results of agencies' retrospective regulatory analyses. See GAO, *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, [GAO-14-268](#) (Washington, D.C.; Apr. 11, 2014).

and benefits.<sup>36</sup> Even though a regulatory flexibility may not be subject to these requirements, agencies may review and assess regulatory flexibilities at their own discretion or in response to feedback from regulated parties, agency staff, or other groups.

Officials from four of the selected agencies reported a variety of other reasons why they did not have plans to fully assess some flexibilities. According to officials, several flexibilities dealt with specific issues arising from the pandemic and were intended to be temporary. In some cases, officials said that since there are no plans to keep the flexibility in place in the future, they do not have plans to conduct assessments at this time. For example, officials from the SBA's Office of Capital Access (OCA) implemented a flexibility allowing small business owners who were delinquent or in default on student loans—initially deemed ineligible—to obtain loans made under the Paycheck Protection Program.<sup>37</sup> According to SBA officials, this flexibility was meant to be temporary and, as a result, OCA does not intend to assess it. SBA's authority to make loans under this program ended on June 30, 2021.<sup>38</sup>

Additionally, officials from USCIS stated that they do not plan to conduct any assessments of a flexibility that temporarily allowed noncitizen workers—those who come temporarily to the U.S. to perform agricultural work of a temporary or seasonal nature (classified as H-2A nonimmigrants)—to change employers while USCIS processed petitions

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<sup>36</sup>For example, the Regulatory Flexibility Act requires agencies to periodically review certain existing regulations which have (or will have) a significant economic impact upon a substantial number of small entities. 5 U.S.C. § 610. Section 5 of Executive Order 12866, *Regulatory Planning and Review*, requires agencies to establish a program for the periodic review of existing significant regulations to determine whether any should be modified or eliminated. 58 Fed. Reg. 51735 (Sept. 30, 1993).

<sup>37</sup>See *Small Business Administration: Business Loan Program Temporary Changes; Paycheck Protection Program—Revision to Loan Amount Calculation and Eligibility*, 86 Fed. Reg. 13149 (Mar. 8, 2021). SBA's earlier rule provided that business owners who were delinquent or had defaulted on a loan from SBA (or any other federal agency) were ineligible for a Paycheck Protection Program loan.

<sup>38</sup>15 U.S.C. § 636(a)(36)(A)(iii).

requesting an extension of stay.<sup>39</sup> According to USCIS officials, agricultural employers informed them that the flexibility was extremely helpful in allowing workers to begin employment at a faster pace, in particular early in the pandemic when the agricultural sector and food supply chain experienced significant disruptions. However, as delays in visa processing were minimized, USCIS determined that the flexibility was not as critical and would not be extended.

In addition to the five selected agencies we spoke with, we have previously reported on regulatory flexibility assessment activity at other agencies. Some agencies reported they have ongoing assessments and other agencies only intend to conduct assessments once the pandemic has ended. For example, we found that the Department of Labor's Occupational Safety and Health Administration plans to conduct a comprehensive lookback on its enforcement practices and flexibilities during the pandemic once the pandemic has ended.<sup>40</sup> Other agencies, such as HUD, initiated efforts prior to the end of the pandemic to assess the use of then still ongoing flexibilities such as those that were implemented as part of the Housing Choice Voucher program.<sup>41</sup> In addition, while CMS' Pandemic Plan indicates that the agency should monitor temporary changes during an emergency and evaluate their effect after the emergency is over, we found that CMS conducted only

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<sup>39</sup>See *Department of Homeland Security: Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due to the COVID-19 National Emergency*, 85 Fed. Reg. 21739 (Apr. 20, 2020). Permanent rules permit a worker to begin working for certain H-2A employers (i.e., in good standing under E-Verify) upon receipt of the employer's petition with USCIS requesting the worker's stay in the U.S. be extended. The authorized period of work may not exceed 120 days from receipt of the petition. 8 C.F.R. § 274a.12(b)(21). The temporary rule permitted this for any H-2A employer, but the employment authorization was limited to 45 days. In both cases, before an employer may file an extension of stay petition with USCIS, they must obtain a valid temporary labor certification from the U.S. Department of Labor. This flexibility was extended twice and ultimately covered petitions for an extension of stay received no later than June 16, 2021. See *Department of Homeland Security: Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due to the COVID-19 National Emergency: Extension of Certain Flexibilities*, 85 Fed. Reg. 82291 (Dec. 18, 2020).

<sup>40</sup>[GAO-22-105051](#).

<sup>41</sup>GAO, *COVID-19: Additional Risk Assessment Actions Could Improve HUD Oversight of CARES Act Funds*, [GAO-21-104542](#) (Washington, D.C.: Sept. 30, 2021).

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limited oversight of the effects of the temporary changes (see text box below).<sup>42</sup>

**Centers for Medicare & Medicaid (CMS) Temporary Changes to States' Medicaid Programs**



The Department of Health and Human Services' CMS approved a number of temporary changes to states' Medicaid home- and community-based services programs, where providers help beneficiaries with daily activities, such as bathing, dressing, and eating. However, in September 2021, we reported that CMS focused on supporting states' implementation of temporary program changes and conducted limited oversight of the effects of those changes. We recommended that CMS (1) develop procedures to monitor temporary changes during public health emergencies, and (2) evaluate these temporary changes after the COVID-19 emergency and address opportunities for improvement. CMS agreed with these recommendations, but as of December 2021 has not completed actions on them.

Source: [GAO-21-104401](#). | GAO-105047

Conducting assessments and identifying lessons learned can help agencies respond to future emergencies, as we and others have previously reported. Further, agencies can use retrospective analysis to examine how existing regulations have contributed to specific policy goals, to assess the effectiveness of their implementation, or to reexamine their estimated benefits and costs based on actual performance and experience.<sup>43</sup> Effective monitoring and evaluations of key agency programs or projects can help agencies identify and correct deficiencies and improve results.<sup>44</sup> However, conducting assessments too early may provide agencies with incomplete information. According to OMB staff, since the pandemic is ongoing, it has yet to work with

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<sup>42</sup>GAO, *Medicaid Home- and Community-Based Services: Evaluating COVID-19 Response Could Help CMS Prepare for Future Emergencies*, [GAO-21-104401](#) (Washington, D.C.: Sept. 8, 2021).

<sup>43</sup>[GAO-14-268](#).

<sup>44</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014). OMB has also published guidance on the need to conduct assessments on the effectiveness and efficiency of programs, policies, and organizations. See OMB, *Evidence-Based Policymaking: Learning Agendas and Annual Evaluation Plans*, M-21-27 (Washington, D.C.: June 30, 2021).



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agencies in a systematic manner to perform a retrospective analysis of whether regulatory flexibilities agencies implemented in response to the pandemic achieved their intended goals.

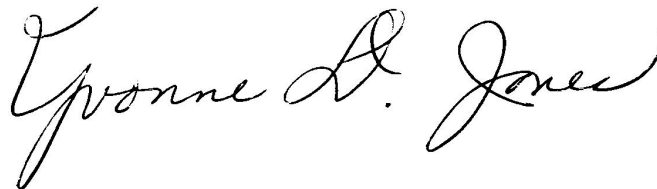
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## Agency Comments

We provided a draft of this report to the 24 major federal agencies and the Office of Management and Budget for review and comment. We received written comments from the U.S. Agency for International Development, the Nuclear Regulatory Commission, and the Social Security Administration that are reprinted in appendixes III, IV, and V. The Department of Health and Human Services, Environmental Protection Agency, and Office of Management and Budget provided technical comments, which we incorporated as appropriate. The remaining 19 agencies informed us that they had no comments.

We are sending copies of this report to the appropriate congressional committees, the heads of each of the 24 major agencies, and the Director of the Office of Management and Budget. In addition, the report will be available at no charge on our website at <http://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-6806 or [JonesY@gao.gov](mailto:JonesY@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in the appendix VI.



Yvonne D. Jones  
Director, Strategic Issues

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*List of Committees*

The Honorable Patrick Leahy  
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The Honorable Richard Shelby  
Vice Chairman  
Committee on Appropriations  
United States Senate

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Subcommittee on Government Operations and Border Management  
Committee on Homeland Security and Governmental Affairs  
United States Senate

*List of Committees Continued*

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The Honorable Kay Granger

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The Honorable Richard E. Neal  
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Committee on Ways and Means  
House of Representatives

## Appendix I: Objectives, Scope, and Methodology

Our objectives were to describe (1) to what extent selected agencies implemented regulatory flexibilities in response to the COVID-19 pandemic; (2) what plans, policies, and other tools selected agencies used to identify and design regulatory flexibilities; and (3) what efforts selected agencies took to assess the impacts of regulatory flexibilities and identify lessons learned.

For the purposes of this report, we defined “regulatory flexibilities” as actions agencies take, at least in part, to temporarily reduce regulatory burdens or constraints imposed on those affected by the regulations. Regulatory flexibilities can include actions that modify regulatory standards themselves, as well as activities that modify their applicability (e.g., through waivers or exemptions) or enforcement (e.g., by giving inspection staff flexibility on how to address noncompliance). Regulatory flexibilities may be based on a range of legal authorities, from existing regulatory or statutory authorities to COVID-19-related statutory (and executive order) authorities or requirements. We excluded from our coverage the use of grants management flexibilities authorized by the Office of Management and Budget (OMB).<sup>1</sup> We previously reported on the federal government’s efforts to support its grantees during the pandemic,

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<sup>1</sup>Beginning in March 2020, OMB issued guidance that identified temporary exceptions to grants management requirements federal agencies could make available to their grantees, as the agencies deemed appropriate and to the extent permitted by law. OMB issued this guidance in a series of four memorandums. See OMB, *Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19)*, M-20-11 (Washington, D.C.: Mar. 9, 2020); *Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) Due to Loss of Operations*, M-20-17 (Washington, D.C.: Mar. 19, 2020); *Repurposing Existing Federal Financial Assistance Programs and Awards to Support the Emergency Response to the Novel Coronavirus (COVID-19)*, M-20-20 (Washington, D.C.: Apr. 9, 2020); and *Extension of Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations*, M-20-26 (Washington, D.C.: June 18, 2020).

including how OMB and selected agencies developed and implemented grant flexibilities.<sup>2</sup>

To describe the extent to which agencies implemented regulatory flexibilities in response to the COVID-19 pandemic, we administered a survey to 24 major agencies to collect high-level information related to flexibilities they implemented in their respective pandemic responses.<sup>3</sup> To inform our survey, we reviewed findings from our prior and ongoing work on specific flexibilities, including regulatory flexibilities, agencies have implemented in response to the COVID-19 pandemic. We also interviewed knowledgeable officials at four agencies. Through this work, we identified four types of flexibilities agencies used:

- modifications of regulations;
- delayed effective and compliance dates for regulations;
- waivers or exemptions; and
- changes to enforcement.

We also identified four methods agencies used to implement their flexibilities:

- notice-and-comment rulemaking;
- interim final rulemaking;
- guidance; and
- approval or grant of regulatory relief.

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<sup>2</sup>GAO, *Grants Management: OMB Should Collect and Share Lessons Learned From Use of COVID-19 Related Grant Flexibilities*, [GAO-21-318](#) (Washington, D.C.: Mar. 31, 2021). OMB issued additional guidance beyond the scope of our March 2021 report, which we also excluded from our coverage. See OMB, *Promoting Public Trust in the Federal Government through Effective Implementation of the American Rescue Plan Act and Stewardship of the Taxpayer Resources*, M-21-20 (Washington, D.C.: Mar. 19, 2021).

<sup>3</sup>The 24 major agencies are those identified in the Chief Financial Officers (CFO) Act of 1990, as amended. 31 U.S.C. § 901(b). The 24 CFO Act agencies are the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, and Veterans Affairs; National Aeronautics and Space Administration; Environmental Protection Agency; U.S. Agency for International Development; General Services Administration; National Science Foundation; Nuclear Regulatory Commission; Office of Personnel Management; Small Business Administration; and Social Security Administration.

The survey collected agency responses related to (1) whether the agencies implemented any regulatory flexibilities in response to the COVID-19 pandemic; (2) whether and how often agencies implemented different types of flexibilities in response to the COVID-19 pandemic compared to before the pandemic; (3) whether and how often agencies implemented flexibilities through various methods in response to the COVID-19 pandemic compared to before the pandemic; and (4) agencies' assessment efforts of their flexibilities.

We emailed questionnaires to the 24 agencies in October 2021 and requested that they coordinate internally across their components to provide one comprehensive agency response.<sup>4</sup> We received and analyzed responses from all of these agencies.<sup>5</sup> To ensure the accuracy of data gathered through this survey, we developed the questionnaire with the help of internal subject matter, legal, and survey specialist experts, and pretested the questionnaire with multiple agency representatives. We also reviewed responses from agencies to check for consistency in responses, complete data, and corroboration from other sources. The Department of Justice (DOJ) initially told us that it had not implemented any regulatory flexibilities in response to COVID-19. Several months after we administered our survey, in February 2022, DOJ submitted a survey response indicating it had used several such flexibilities. We reviewed this response and incorporated it within our analysis.

To describe the plans, policies, and other tools selected agencies used to identify, design, and assess flexibilities, we used agencies' survey responses and other considerations to identify five selected agencies for follow-up work. First, we excluded those agencies from our selection that:

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<sup>4</sup>Agencies were given discretion with how they coordinated internally across their own components and provided one comprehensive response for their agency. For an example, an agency may have reported the "average" response across all of its components or the "highest" response reported by an individual component.

<sup>5</sup>We did not independently verify that agencies' survey responses included only actions that are "regulatory flexibilities" as defined by our methodology or that actions were classified under the appropriate flexibility categories provided in our survey response options. For the purposes of this report, we use agencies' classifications of these actions.

- did not respond to the survey or reported that they did not implement regulatory flexibilities in response to the pandemic,<sup>6</sup>
- generally did not focus their pandemic response priorities on the American public, or
- were the subject of our other issued or ongoing reports on the federal response to the pandemic.<sup>7</sup>

Using the data reported by agencies in response to our survey, we identified those agencies that reported implementing the greatest number of flexibility types, prioritizing those agencies with responses indicating that they used these flexibilities “much more” and “somewhat more” than before the pandemic. We selected the Department of Homeland Security (DHS) and the Environmental Protection Agency (EPA) because they reported implementing each of the four flexibility types at least “somewhat more” often in response to the pandemic.

We then prioritized those agencies that also reported using the greatest number of methods to implement their flexibilities at least “somewhat more” often in response to the pandemic compared to before the pandemic. We selected the Departments of Energy (DOE) and Transportation (DOT) on the basis of these criteria. To ensure we included a range of agencies’ assessment actions, we identified those agencies that reported implementing at least one regulatory flexibility that they do not plan to assess, as well as one flexibility that they do plan to assess. Based on these criteria, we also selected the Small Business Administration (SBA) as our fifth and final agency.<sup>8</sup>

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<sup>6</sup>As noted above, DOJ originally told us that it had not implemented regulatory flexibilities during the pandemic. Given this response, and the timeframes of our report, DOJ was excluded from our agency selection. Following its revised response, we concluded that excluding DOJ was unlikely to have meaningfully impacted our findings or conclusions.

<sup>7</sup>The CARES Act included a provision for us to issue bi-monthly reports on the federal response to the COVID-19 pandemic for a year, with periodic reports after that. Pub. L. No. 116-136, § 19010, 134 Stat. 281, 579-81 (2020). Given the central role that certain agencies have played in coordinating the nation’s pandemic response and the large volume of our issued and ongoing reports related to those efforts, we made the decision to exclude the Departments of Health and Human Services and Treasury from our agency selection.

<sup>8</sup>In addition to SBA, two of the other agencies we already selected—DHS and DOE—also reported at least one flexibility they plan to assess and one that they do not.

We interviewed knowledgeable officials at each of the five selected agencies about how the agencies identified opportunities to implement regulatory flexibilities, including whether they identified any tradeoffs, and the agencies' efforts to assess those flexibilities.<sup>9</sup> We asked each selected agency to discuss four flexibilities it implemented through different methods and primarily at the agency's discretion—rather than as required by law—and to select those flexibilities that were most important to its pandemic response efforts.<sup>10</sup> As a result, the examples we discuss in this report—including how selected agencies identified, planned, and assessed their flexibilities—are illustrative in nature and not generalizable to all flexibilities implemented by the agency.

We reviewed agency documentation of their flexibility examples, including from agency website announcements and the Federal Register. Additionally, for all three objectives, we reviewed and summarized findings from our issued work related to flexibilities, including regulatory flexibilities, the major agencies have implemented in response to the pandemic. We incorporated several of these examples, as appropriate, to provide context related to our findings. These flexibility examples generally targeted four major categories of assistance or relief during the pandemic: (1) public health, (2) individuals, (3) the economy, and (4) states and tribes. See appendix II for a list of our products issued by April 2022 that contain information related to flexibilities—including regulatory flexibilities—agencies implemented in response to the COVID-19 pandemic. We also communicated with staff from OMB's Office of Information and Regulatory Affairs regarding its role in helping agencies identify and design regulatory flexibilities.

We conducted this performance audit from March 2021 to June 2022 in accordance with generally accepted government auditing standards.

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<sup>9</sup>Aside from the five selected agencies, we did not conduct follow-up interviews with officials from the other agencies we surveyed.

<sup>10</sup>Some selected agencies—DHS, SBA, DOE, and DOT—provided details on flexibilities implemented by several component offices, while EPA focused on flexibilities from its Office of Land and Emergency Management. Specifically, DHS and SBA provided details on four flexibilities from each of two components—DHS' Federal Emergency Management Agency and U.S. Citizenship and Immigration and SBA's Office of Disaster Assistance and Office of Capital Access. DOE provided details on flexibilities implemented across its Offices of Energy Efficiency and Renewable Energy, Environmental Management, Science, and the Southwestern Power Administration. Finally, DOT provided details on flexibilities implemented by its U.S. Maritime Administration, Federal Transit Administration, Pipeline and Hazardous Materials Safety Administration, and Federal Highway Administration.



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**Appendix I: Objectives, Scope, and  
Methodology**

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Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Appendix II: Our Reports Related to COVID-19 Flexibilities as of April 2022

In developing our reporting on regulatory flexibilities implemented in response to COVID-19 by major departments and agencies, we identified and reviewed completed and ongoing GAO work related to COVID-19 flexibilities, including regulatory flexibilities. Reviewed work includes our recurring CARES Act reports, each of which contains a number of enclosures addressing a range of federal programs and activities across the government concerning public health and the economy.<sup>1</sup> Our reviewed work also includes reports developed in response to the CARES Act and reports developed in response to congressional requests. In tables 1 and 2 below, we summarize information on reports that we identified as being related to COVID-19 flexibilities.

While our reporting focuses on “regulatory flexibilities,” tables 1 and 2 may include additional work focusing on non-regulatory flexibilities. We did not conduct an in-depth review to exclude all work focusing on non-regulatory flexibilities from these tables.

**Table 1: Enclosures on COVID-19 Flexibilities from Our Recurring CARES Act Reports as of April 2022**

Enclosure topic	Major agency	Report number and issuance date				
		<a href="#">GAO-22-105397</a> (Apr. 27, 2022)	<a href="#">GAO-22-105291</a> (Jan. 27, 2022)	<a href="#">GAO-22-105051</a> (Oct. 27, 2021)	<a href="#">GAO-21-551</a> (July 19, 2021)	<a href="#">GAO-21-387</a> (Mar. 31, 2021)
Unemployment Insurance programs	Department of Labor (DOL)	Included	Included	Included	Included	Included
Nutrition Assistance	Department of Agriculture (USDA), Department of Health and Human Services (HHS)	Not Included	Included	Not Included	Included	Included
Child Nutrition	USDA	Not Included	Not Included	Included	Included	Included

<sup>1</sup>We have regularly issued government-wide reports on the federal response to the COVID-19 pandemic. For the latest report, see GAO, *COVID-19: Current and Future Federal Preparedness Requires Fixes to Improve Health Data and Address Improper Payments*, [GAO-22-105397](#) (Washington, D.C.: Apr. 27, 2022). Our other government-wide reports are available at <https://www.gao.gov/coronavirus>.

**Appendix II: Our Reports Related to COVID-19  
Flexibilities as of April 2022**

Worker Safety and Health	DOL	Not Included	Not Included	Included	Not Included	Not Included
Food and Drug Administration Oversight of COVID-19 Vaccine Manufacturing Quality	HHS	Not Included	Not Included	Included	Not Included	Not Included
Medicaid Spending and Flexibilities	HHS	Not Included	Not Included	Not Included	Not Included	Included
Emergency Use Authorizations for Medical Devices	HHS, DOL	Not Included	Not Included	Not Included	Not Included	Included
Services for Older Adults	HHS, DOL	Not Included	Not Included	Not Included	Not Included	Not Included
Medicare Waivers	HHS	Not Included	Not Included	Not Included	Not Included	Not Included
Child Welfare	HHS	Not Included	Not Included	Not Included	Not Included	Not Included
Temporary Financial Regulatory Changes	Department of the Treasury	Not Included	Not Included	Not Included	Not Included	Not Included

		<b>Report number and issuance date</b>			
Enclosure topic	Major agency	<a href="#">GAO-21-265</a> (Jan. 28, 2021)	<a href="#">GAO-21-191</a> (Nov. 30, 2020)	<a href="#">GAO-20-701</a> (Sept. 21, 2020)	<a href="#">GAO-20-625</a> (June 25, 2020)
Unemployment Insurance programs	Department of Labor (DOL)	Included	Included	Included	Included
Nutrition Assistance	Department of Agriculture (USDA), Department of Health and Human Services (HHS)	Not Included	Included	Not Included	Included
Child Nutrition	USDA	Not Included	Not Included	Included	Not Included
Worker Safety and Health	DOL	Included	Not Included	Included	Not Included
Food and Drug Administration Oversight of COVID-19 Vaccine Manufacturing Quality	HHS	Not Included	Not Included	Not Included	Not Included
Medicaid Spending and Flexibilities	HHS	Included	Included	Included	Included
Emergency Use Authorizations for Medical Devices	HHS, DOL	Not Included	Not Included	Not Included	Not Included
Services for Older Adults	HHS, DOL	Included	Not Included	Not Included	Not Included
Medicare Waivers	HHS	Not Included	Included	Not Included	Included
Child Welfare	HHS	Not Included	Included	Not Included	Not Included
Temporary Financial Regulatory Changes	Department of the Treasury	Not Included	Not Included	Not Included	Included

Legend: Included = Included X = Not Included.  
Source: GAO. | GAO-22-105047

Notes: Information in this table focuses on flexibilities implemented by the 24 major departments and agencies identified in the Chief Financial Officers Act of 1990, as amended. 31 U.S.C. § 901(b).

**Appendix II: Our Reports Related to COVID-19  
Flexibilities as of April 2022**

For a complete list of our COVID-related products, including each of the recurring reports identified in this table, see <https://www.gao.gov/coronavirus>

**Table 2: Our Selected Ongoing and Completed Work on COVID-19 Flexibilities as of April 2022**

Issuance date	Report number	Report topic	Major agency
Ongoing	None	U.S. Customs and Border Protection Trade Facilitation During COVID-19	Department of Homeland Security
Ongoing	None	Financial Regulatory Oversight During COVID-19	Department of the Treasury
Ongoing	None	Fraud Risks in SBA Pandemic Relief Programs	Small Business Administration (SBA)
Ongoing	None	HHS Medicare Telehealth Waivers for COVID-19	Department of Health and Human Services (HHS)
Ongoing	None	Medicare Provider Waivers Due to COVID-19	HHS
Ongoing	None	Political Interference at Selected HHS Agencies	HHS
Ongoing	None	Unemployment Insurance Fraud Risk Management and the Extent of Fraud	Department of Labor (DOL)
Ongoing	None	Oversight of Unemployment Insurance During COVID-19	DOL
Ongoing	None	COVID-19 Diagnostic Testing	HHS
Mar. 31, 2022	<a href="#">GAO-22-104700</a>	Medicaid Telehealth During COVID-19	HHS
Feb. 10, 2022	<a href="#">GAO-22-105490</a>	Oversight of Emergency Rental Assistance Program	Treasury
Oct. 21, 2021	<a href="#">GAO-22-104429</a>	Aviation Operations in a Pandemic Environment	Department of Transportation
Sept. 30, 2021	<a href="#">GAO-21-104542</a>	HUD CARES Act Oversight	Department of Housing and Urban Development (HUD)
Sept. 8, 2021	<a href="#">GAO-21-104401</a>	Medicaid Waivers and Flexibilities for COVID-19	HHS
July 12, 2021	<a href="#">GAO-21-554</a>	Pandemic Forbearance and Foreclosure Protections	HUD, Department of Agriculture, Department of Veterans Affairs
May 19, 2021	<a href="#">GAO-21-575T</a>	Flexibilities in the Medicare and Medicaid Programs During the COVID-19 Public Health Emergency	HHS
Feb. 11, 2021	<a href="#">GAO-21-319</a>	Operation Warp Speed: COVID-19 Vaccine Development Status and Efforts to Address Manufacturing Challenges	HHS, Department of Defense (DOD)
Nov. 17, 2020	<a href="#">GAO-21-207</a>	Therapeutics and Vaccines for COVID-19	HHS, DOD

Source: GAO. | GAO-22-105047

Note: Information in this table focuses on flexibilities implemented by the 24 major departments and agencies identified in the Chief Financial Officers (CFO) Act of 1990, as amended. 31 U.S.C. § 901(b). Some work may also address flexibilities implemented by non-CFO Act agencies.

# Appendix III: Comments from the U.S. Agency for International Development



June 3, 2022

Yvonne D. Jones  
Director, Strategic Issues  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20226

Re: *COVID-19: Agencies Increased Use of Some Regulatory Flexibilities and Are Taking Steps to Assess Them* (GAO-22-105047)

Dear Ms. Jones:

I am pleased to provide the formal response of the U.S. Agency for International Development (USAID) to the draft report produced by the U.S. Government Accountability Office (GAO) titled, *COVID-19: Agencies Increased Use of Some Regulatory Flexibilities and Are Taking Steps to Assess Them* (GAO-22-105047).

This report contains no recommendations for USAID. We were pleased to participate in the GAO's evaluation of the regulatory flexibilities implemented in order to address the COVID-19 pandemic. The COVID-19 pandemic has increased humanitarian needs and funding requirements around the world, and USAID is working to address the primary, secondary, and tertiary impacts of the pandemic globally. We seek maximum effectiveness of taxpayer dollars in responding to COVID-19 and we believe that use of these flexibilities has helped facilitate this.

I am transmitting this letter from USAID for inclusion in the GAO's final report. Thank you for the opportunity to respond to the draft report, and for the courtesies extended by your staff while conducting this engagement. We appreciate the opportunity to participate in this evaluation.

Sincerely,

*Colleen R. Allen*

Colleen Allen  
Assistant Administrator  
Bureau for Management

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## Text of Appendix III: Comments from the U.S. Agency for International Development

June 3, 2022

Yvonne D. Jones Director, Strategic Issues  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20226

Re: COVID-19: Agencies Increased Use of Some Regulatory Flexibilities and Are  
Taking Steps to Assess Them (GAO-22-105047)

Dear Ms. Jones:

I am pleased to provide the formal response of the U.S. Agency for International  
Development (USAID) to the draft report produced by the U.S. Government  
Accountability Office (GAO) titled, COVID-19: Agencies Increased Use of Some  
Regulatory Flexibilities and Are Taking Steps to Assess Them (GAO-22-105047).

This report contains no recommendations for USAID. We were pleased to participate  
in the GAO's evaluation of the regulatory flexibilities implemented in order to address  
the COVID-19 pandemic. The COVID-19 pandemic has increased humanitarian  
needs and funding requirements around the world, and USAID is working to address  
the primary, secondary, and tertiary impacts of the pandemic globally. We seek  
maximum effectiveness of taxpayer dollars in responding to COVID-19 and we  
believe that use of these flexibilities has helped facilitate this.

I am transmitting this letter from USAID for inclusion in the GAO's final report. Thank  
you for the opportunity to respond to the draft report, and for the courtesies extended  
by your staff while conducting this engagement. We appreciate the opportunity to  
participate in this evaluation.

Sincerely,  
Colleen Allen  
Assistant Administrator Bureau for Management

# Appendix IV: Comments from the Nuclear Regulatory Commission



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

June 2, 2022

Ms. Yvonne D. Jones, Director  
Strategic Issues  
U.S. Government Accountability Office  
441 G St., NW  
Washington, DC 20548

Dear Ms. Jones:

Thank you for providing the U.S. Nuclear Regulatory Commission (NRC) with the opportunity to review and comment on the U.S. Government Accountability Office's (GAO's) draft report GAO-22-105047, "COVID-19: Agencies Increased Use of Some Regulatory Flexibilities and Are Taking Steps to Assess Them." The NRC has reviewed the draft report and does not have any comments.

If you have any questions regarding this response, please contact John Jolicoeur. Mr. Jolicoeur can be reached by telephone at (301) 415-1642 or by email at [John.Jolicoeur@nrc.gov](mailto:John.Jolicoeur@nrc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "D. Dorman".

Signed by Dorman, Dan  
on 06/02/22

Daniel H. Dorman  
Executive Director  
for Operations

---

## Text of Appendix IV: Comments from the Nuclear Regulatory Commission

Ms. Yvonne D. Jones, Director  
Strategic Issues  
U.S. Government Accountability Office  
441 G St., NW  
Washington, DC 20548

Dear Ms. Jones:

Thank you for providing the U.S. Nuclear Regulatory Commission (NRC) with the opportunity to review and comment on the U.S. Government Accountability Office's (GAO's) draft report

GAO-22-105047, "COVID-19: Agencies Increased Use of Some Regulatory Flexibilities and Are Taking Steps to Assess Them." The NRC has reviewed the draft report and does not have any comments.

If you have any questions regarding this response, please contact John Jolicoeur. Mr. Jolicoeur can be reached by telephone at (301) 415-1642 or by email at [John.Jolicoeur@nrc.gov](mailto:John.Jolicoeur@nrc.gov).

Sincerely,  
Daniel H. Dorman  
Executive Director  
for Operations



# Appendix V: Comments from the Social Security Administration



June 8, 2022

Yvonne D. Jones  
Director, Strategic Issues  
United States Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Director Jones:

Thank you for the opportunity to review the draft report, "COVID-19: Agencies Increased Use of Some Regulatory Flexibilities and Are Taking Steps to Assess Them" (GAO-22-105047). We have no comments.

Please contact me at (410) 965-2611 if I can be of further assistance. Your staff may contact Trae Sommer, Director of the Audit Liaison Staff, at (410) 965-9102.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Frey".

Scott Frey  
Chief of Staff

SOCIAL SECURITY ADMINISTRATION BALTIMORE, MD 21235-0001

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## Text of Appendix V: Comments from the Social Security Administration

SOCIAL SECURITY  
Office of the Commissioner

June 8, 2022

Yvonne D. Jones  
Director, Strategic Issues  
United States Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Director Jones:

Thank you for the opportunity to review the draft report, "COVID-19: Agencies Increased Use of Some Regulatory Flexibilities and Are Taking Steps to Assess Them" (GAO-22-105047). We have no comments.

Please contact me at (410) 965-2611 if I can be of further assistance. Your staff may contact Trae Sommer, Director of the Audit Liaison Staff, at (410) 965-9102.

Sincerely,  
Scott Frey  
Chief of Staff

SOCIAL SECURITY ADMINISTRATION      BALTIMORE, MD 21235-0001

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## Appendix VI: GAO Contacts and Staff Acknowledgments

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### GAO Contacts

Yvonne D. Jones at (202) 512-6806 or [JonesY@gao.gov](mailto:JonesY@gao.gov)

---

### Staff Acknowledgments

In addition to the above contact, Danielle Novak (Assistant Director), J. Daniel Paulk and Mackenzie D. Verniero (Analysts-in-Charge), Jacqueline Chapin, Karin Fangman, Steven Putansu, Robert Robinson, and Wade Tanner, made major contributions to this report.

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U.S. Government Accountability Office, 441 G Street NW, Room 7149  
Washington, DC 20548

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Washington, DC 20548



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