



# COVID-19 CONTRACTING

## Observations on Contractor Paid Leave Reimbursement Guidance and Use

Accessible Version

September 2020

## Why GAO Did This Study

In March 2020, Congress passed the CARES Act, which provides over \$2 trillion in emergency assistance and healthcare response for individuals, families, and businesses affected by COVID-19. The CARES Act also includes a provision for GAO to review federal contracting pursuant to authorities provided in the Act. This report addresses the implementation of section 3610 of the CARES Act, which authorizes federal agencies to reimburse contractors for paid leave related to the COVID-19 pandemic through September 30, 2020.

This report describes (1) the extent to which section 3610 implementation guidance provided by selected federal agencies and OMB differs and (2) the extent to which selected federal agencies reported use of section 3610 authority through July 20, 2020.

GAO reviewed relevant guidance issued by OMB and the seven federal agencies with contract obligations greater than \$10 billion in fiscal year 2019; interviewed cognizant officials from OMB and each agency; and reviewed comments provided by and spoke with representatives from four industry associations. GAO also analyzed public procurement data reported by selected agencies to FPDS-NG through July 20, 2020 on the use of section 3610 authority.

GAO will continue to assess how agencies are implementing section 3610 authority as part of a series of planned reports regarding the federal response to COVID-19.

View [GAO-20-662](#). For more information, contact Timothy J. DiNapoli at (202) 512-4841 or [tinapoli@gao.gov](mailto:tinapoli@gao.gov).

## COVID-19 CONTRACTING

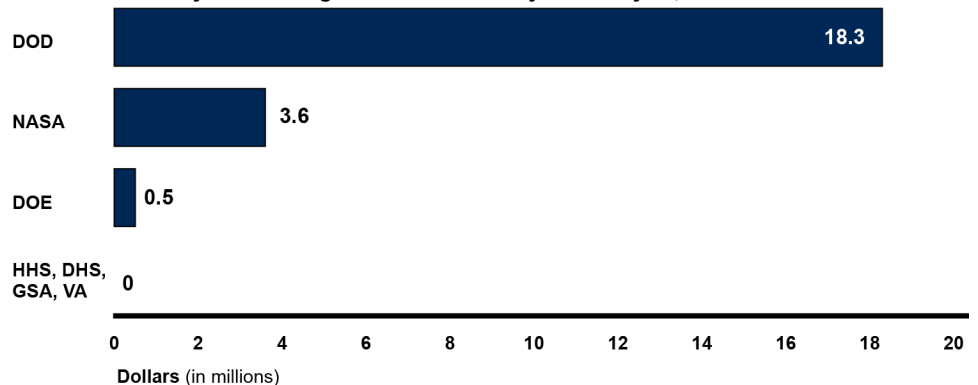
### Observations on Contractor Paid Leave Reimbursement Guidance and Use

## What GAO Found

Section 3610 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act generally authorizes agencies at their discretion to reimburse a contractor for the cost of paid leave incurred during the pandemic so that it can maintain its workforce in a ready state. Between March 2020—when the CARES Act was enacted—and early July 2020, the Office of Management and Budget (OMB) and each of the seven other agencies in GAO’s review issued guidance to implement section 3610. While largely similar, GAO’s work identified some differences across these guidance documents, including the extent to which the rates used to calculate these reimbursements could include profit or fees. OMB issued additional guidance on July 14, 2020, that addressed these differences and clarified how agencies should handle each situation. For example, OMB noted that profit or fees should generally not be reimbursed but provided options for addressing situations in which removing profit or fees would be burdensome.

OMB advised agencies to report the amount reimbursed using section 3610 authority via contract modifications to the Federal Procurement Data System-Next Generation (FPDS-NG). After excluding reported obligations identified by agency officials as not associated with section 3610 authority, the reported data indicated that agencies made relatively little use of the authority through July 2020 (see figure). However, the Department of Energy (DOE) reimbursed contractors for almost \$550 million in paid leave costs, stating it used existing obligations rather than adding funding via a contract modification. As a result, these amounts were not reported to FPDS-NG as section 3610 reimbursements.

**Obligations Using Section 3610 Authority Reported to the Federal Procurement Data System-Next Generation by Selected Agencies from January 31 to July 20, 2020**



DOD = Department of Defense    DOE = Department of Energy    DHS = Department of Homeland Security  
 NASA = National Aeronautics and Space Administration    HHS = Department of Health and Human Services    GSA = General Services Administration  
 VA = Department of Veterans Affairs

Source: GAO analysis of agency-reviewed Federal Procurement Data System-Next Generation data. | GAO-20-662

Agency officials and industry representatives GAO interviewed identified several factors that limited section 3610 obligations to date, including the absence of dedicated funding. With the exceptions of the Department of Defense (DOD) and DOE, agency officials GAO met with either did not expect a large amount or were uncertain about the level of future requests for section 3610 reimbursements. DOD officials stated that they expected requests amounting to billions of dollars.

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**Abbreviations**

CARES Act	Coronavirus Aid, Relief, and Economic Security Act
COVID-19	Coronavirus Disease 2019
DHS	Department of Homeland Security
DOD	Department of Defense
DOE	Department of Energy
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GSA	General Services Administration
HHS	Department of Health and Human Services
NASA	National Aeronautics and Space Administration
OMB	Office of Management and Budget
VA	Department of Veterans Affairs

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September 3, 2020

Congressional Committees

Coronavirus Disease 2019 (COVID-19) is a strain of coronavirus to which the public does not have immunity. After emerging in late 2019, the virus quickly spread around the globe. On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency for the United States. On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic, and 2 days later the President declared COVID-19 a national emergency. The nation subsequently has seen the spillover effects of a pandemic on the economy as millions have lost their jobs due to stay-at-home orders and business closures aimed at “flattening the curve,” or taking the burden off the health care system by reducing the spread of infections.

Among other actions in response to this unprecedented global crisis, in March 2020 Congress passed, and the President signed into law, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which provides over \$2 trillion in emergency assistance and health care response for individuals, families, and businesses affected by COVID-19. The CARES Act also includes a provision for GAO to provide a comprehensive audit and review of federal contracting pursuant to authorities provided in the Act. This report—part of a series of planned reports regarding the federal response to COVID-19—addresses the implementation of section 3610 of the CARES Act.<sup>1</sup> Section 3610 generally authorizes federal agencies to reimburse contractors for paid leave provided to a contractor’s employees and subcontractors who are unable to access work sites due to facility closures or other restrictions, and whose duties cannot be performed remotely during the COVID-19 pandemic.<sup>2</sup> This authority extends through September 30, 2020. While authorizing such reimbursements, section 3610 did not appropriate any additional funding to agencies to cover these expenses. This report describes (1) the extent to which section 3610 implementation guidance

<sup>1</sup>For example, see GAO, *COVID-19 Contracting: Observations on Federal Contracting in Response to the Pandemic*, [GAO-20-632](#) (Washington, D.C.: July 29, 2020) and *COVID-19: Opportunities to Improve Federal Response and Recovery Efforts*, [GAO-20-625](#) (Washington, D.C.: June 25, 2020).

<sup>2</sup>Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281, § 3610 (2020).

provided by selected federal agencies and the Office of Management and Budget (OMB) differs; and (2) the extent to which selected federal agencies reported use of section 3610 authority as of July 20, 2020.

To identify the extent to which section 3610 implementation guidance provided by selected federal agencies and OMB differs, we selected the seven federal agencies with contract obligations greater than \$10 billion in fiscal year 2019. These agencies were:

- Department of Defense (DOD)
- Department of Energy (DOE)
- Department of Health and Human Services (HHS)
- Department of Homeland Security (DHS)
- Department of Veterans Affairs (VA)
- General Services Administration (GSA)
- National Aeronautics and Space Administration (NASA)

We gathered and analyzed guidance, memorandums, frequently asked questions, and other resources related to implementation of section 3610 issued by these agencies, as well as by OMB. We compared these documents to determine similarities and differences. We also interviewed or received written responses from cognizant officials at these agencies to learn about these similarities and differences and plans for additional guidance. The scope of this engagement does not include use of section 3610 authority within the Intelligence Community.<sup>3</sup>

To identify the extent to which selected federal agencies reported use of section 3610 authority as of July 20, 2020, we analyzed procurement data on contract obligations related to the use of section 3610 authority for those selected agencies that reported use in the Federal Procurement Data System-Next Generation (FPDS-NG) between January 2020 and

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<sup>3</sup>The Intelligence Community consists of 17 civilian and military organizations, including the Central Intelligence Agency, Defense Intelligence Agency, Federal Bureau of Investigation, National Reconnaissance Office, National Security Agency, and Office of the Director of National Intelligence. We coordinated with the National Reconnaissance Office Inspector General, who also serves as the Pandemic Response Accountability Committee's Intelligence Community Liaison. The Office of Inspector General is conducting a separate evaluation of the National Reconnaissance Office's implementation of section 3610 authorized by the CARES Act and will share its scope and methodology across the Intelligence Community Inspector General community.

July 2020. For the selected agencies, we identified FPDS-NG records for which the Description of Requirements field contained the terminology specified by OMB—“COVID-19 3610”—to indicate use of section 3610 authority.<sup>4</sup> We manually reviewed these records to ascertain whether they appeared to address section 3610-related activities and asked the selected agencies to also review these records for accuracy. We reviewed guidance from these seven agencies as well as OMB related to the tracking and reporting of the use of section 3610 authority and interviewed or received written responses from cognizant officials. We discussed and collected examples of internal tracking tools, such as spreadsheets used at these agencies to monitor use of section 3610 authority, as well as data collected through these tools. We assessed the reliability of FPDS-NG data by reviewing existing information about the FPDS-NG system and the data it collects—specifically, the data dictionary and data validation rules—and performed electronic testing. We also discussed with selected agencies the steps they took to review the accuracy of contract obligations reported to FPDS-NG as relating to section 3610. After excluding data the agencies determined were not specifically for section 3610-related purposes, we determined the FPDS-NG data were sufficiently reliable for the purposes of describing the extent to which selected agencies reported use of section 3610 authority. We gathered additional perspectives on the use of section 3610 authority from industry associations including the Aerospace Industries Association, Coalition for Government Procurement, National Defense Industrial Association, and Professional Services Council.

We conducted this performance audit from May 2020 to September 2020 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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<sup>4</sup>As part of our query of FPDS-NG records, we included slight variations on the specified OMB terminology, such as “COVID19” in addition to “COVID-19”.

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## Initial Differences in OMB and Selected Agencies' Guidance on Implementing Section 3610 Have Been Addressed

We found that between March 2020—when the CARES Act was enacted—and early July 2020, OMB and each of the agencies we reviewed had issued section 3610 implementing guidance.<sup>5</sup> While the initial set of guidance was largely similar, our work identified two primary differences across these guidance documents: the date from which contractors could request reimbursement of paid leave and the extent to which these reimbursements could cover profit or fees. OMB issued additional guidance on July 14, 2020 that addressed these differences.

Following the enactment of the CARES Act on March 27, 2020, OMB and federal agencies we reviewed began issuing implementation guidance. Guidance took a variety of formats, including memorandums, class deviations, circulars, and frequently asked questions.<sup>6</sup> DOD, DOE, DHS, and NASA issued their initial guidance prior to OMB's first section 3610 guidance, issued on April 17, 2020, and those agencies later issued supplemental guidance.<sup>7</sup> Each of the agencies we reviewed issued some form of guidance by July 2020. DOD finalized earlier draft guidance on August 17, 2020 (see figure 1).

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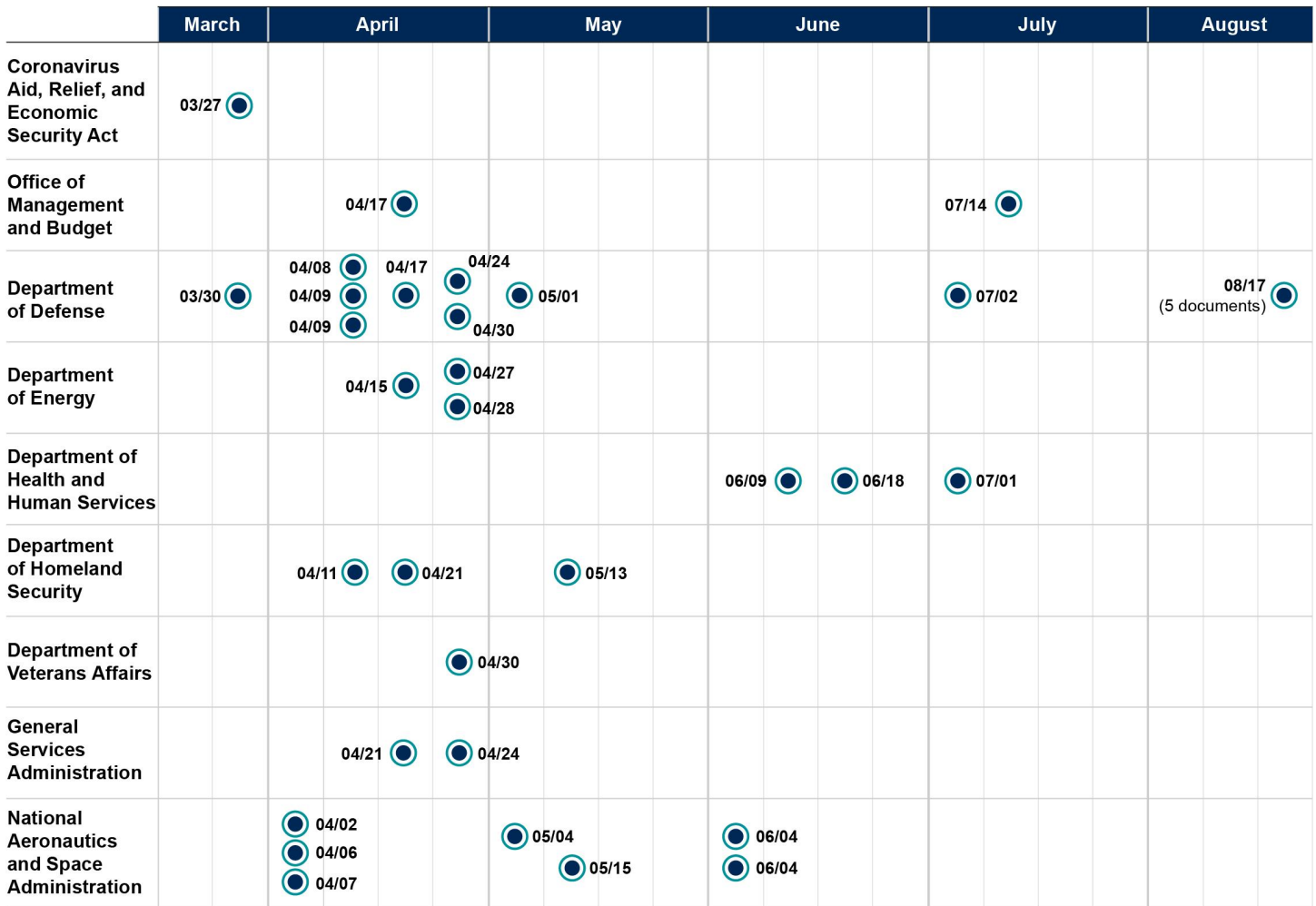
<sup>5</sup>Agencies outside the scope of our review also have issued guidance related to implementation of section 3610. For example, the Environmental Protection Agency provided guidance to contracting personnel and contractors, and in June 2020, that agency's Office of Inspector General issued a memorandum describing the guidance.

<sup>6</sup>Federal Acquisition Regulation (FAR) § 1.404. Class deviations are deviations from the FAR necessary to meet the specific needs and requirements of an agency and which affect more than one contract action. Class deviations are also issued in relation to agency acquisition regulations; for example, to allow DOD organizations to deviate from the Defense Federal Acquisition Regulation Supplement. Defense Federal Acquisition Regulation Supplement § 201.404. DOD's class deviation issued in relation to section 3610 establishes the applicability of section 3610 and the allowability of associated costs.

<sup>7</sup>Office of Management and Budget, *Preserving the Resilience of the Federal Contracting Base in the Fight Against the Coronavirus Disease 2019 (COVID-19)*, OMB Memorandum M-20-22 (Washington, D.C.: Apr. 17, 2020).



**Figure 1: Timeline of Selected Agencies' Issuance of Section 3610 Implementation Guidance**



Source: GAO analysis of selected agency documents. | GAO-20-662

Note: Multiple guidance documents issued by an agency in a short period of time represented either different types of guidance, or guidance that addressed different aspects of section 3610 implementation. For example, on April 8, 2020, the Department of Defense (DOD) issued a class deviation. The next day, DOD issued guidance addressing implementation of section 3610 for different contract types and how to report use of section 3610 authority, as well as a set of frequently asked questions.

OMB's April 17, 2020 guidance notes that maintaining the resilience of the federal contracting base requires a multifaceted strategy to combat the significant disruptions, both to health and economic well-being, caused by COVID-19. According to the guidance, such strategies include maximizing use of contractor telework, extending contract performance dates if telework or other flexible work solutions are not possible, and,

where appropriate, reimbursing contractors for paid leave or negotiating other forms of equitable adjustment necessary as a direct result of COVID-19. For example, the guidance explains that it may be beneficial to reimburse contractors for paid leave to keep personnel in a ready state for activities so the contractor can resume supporting the agency's mission as soon as possible when circumstances permit.

Guidance from OMB and the agencies we reviewed generally reiterates elements of section 3610:

- **Purpose.** Reimbursement is for paid leave provided to keep employees or subcontractors in a ready state, including to protect the life and safety of government and contractor personnel.
- **Rate and hours.** Reimbursement must be at the minimum applicable contract billing rate not to exceed an average of 40 hours per week and does not cover paid leave provided beyond September 30, 2020.
- **Other financial relief.** Maximum authorized reimbursement is to be reduced by the amount of additional credits the contractor may be allowed under either the CARES Act or the Families First Coronavirus Response Act, signed into law on March 18, 2020.<sup>8</sup>

In other instances, guidance from OMB and the agencies in our review includes topics that were not explicitly covered in section 3610:

- **Eligibility.** Section 3610 states that its authority only applies to a contractor whose employees or subcontractors cannot perform work on a site approved by the government—including federally-owned or -leased facilities—due to facility closures or other restrictions and who cannot telework because their duties cannot be performed remotely during the COVID-19 public health emergency. OMB's guidance from April 17, 2020 elaborates on the nature of sites to which section 3610 applies, specifying that approved contractor-owned or contractor-leased facilities qualify. Guidance from all selected agencies reiterates the definition from section 3610, with DOD, DOE, HHS, VA, and GSA guidance also including the language from within the OMB April 17, 2020 guidance.
- **Government discretion to provide reimbursement.** Guidance from OMB and each selected agency emphasizes that

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<sup>8</sup>Pub. L. No. 116-127, 134 Stat. 178 (2020).

reimbursement is at the discretion of the government and not mandatory.

- **Duplication of payment.** Guidance from OMB and each selected agency reminds contracting officers to consider other authorities and funding options when contemplating contractor reimbursement under section 3610. Regarding contractors' attempts to use other sources of financial relief—such as loans under the Paycheck Protection Program or other credits allowed—OMB guidance discusses steps agencies should consider to prevent duplication of payment or “double-dipping.”<sup>9</sup> OMB notes the need for fully supported documentation, which may involve contractor representations for the employee leave costs it requests. To ensure the government is able to recover any improper payments, OMB also states that the contractor is responsible for reporting to the contracting officer if it cannot determine the amount of other funding or credits it will receive at the time it requests section 3610 reimbursement.

Guidance from all selected agencies includes discussion of how to prevent duplication of payment, with some process variation. All place the onus on contractors to either identify other funding or credits received or requested, or make statements that they will not receive such funds or credits. In addition, HHS, GSA, and DHS guidance states that contractors will be responsible for making repayments in the event of duplicate payment.

Agencies also have tailored their guidance to reflect specific alternative approaches available for contracting officers to consider in place of or in addition to section 3610 reimbursement. For example:

- DHS guidance identifies certain standard Federal Acquisition Regulation (FAR) clauses through which equitable adjustments to contract prices in response to COVID-19 disruptions could be made.<sup>10</sup>

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<sup>9</sup>The Paycheck Protection Program is designed to provide loans to small businesses to help them keep their workers on payroll. See Pub. L. No. 116-136, §§ 1102, 1106 (2020); 85 Fed. Reg. 20811, 20814 (Apr. 15, 2020).

<sup>10</sup>FAR § 52.243-1 (Changes-Fixed-Price) and FAR § 52.243-2 (Changes-Cost-Reimbursement).

- NASA guidance identifies some existing FAR and NASA FAR Supplement clauses through which the agency could reimburse paid leave costs.<sup>11</sup>
- GSA guidance suggests contracting officers consider alternatives—including delivery schedule and other contract extensions, use of progress payments, and accelerated payments to small business contractors—before using section 3610 authority.
- DOD guidance outlines additional ways to address the impact of COVID-19 on contractors, including the possibility of relief from contract delivery requirements in the event of delays caused by COVID-19, and contract modifications, subject to the availability of funds, to reflect changes to the government’s needs.

Agency-specific circumstances drove other unique features of some agencies’ guidance. For example, if an obligation by DHS under section 3610 exceeds \$1 million, then the agency must notify Congress in accordance with an existing provision in its appropriations act.<sup>12</sup> GSA has specific processes that address how to implement section 3610 both on its own contracts and those established for use by other agencies. For example, in relation to its government-wide indefinite delivery vehicles, such as the federal supply schedules, GSA’s guidance makes clear that section 3610 authority applies at the order level rather than the contract level.

Our work identified two areas where guidance issued by OMB and some of the agencies we reviewed between March 2020 and early July 2020 differed. In its April 2020 guidance, which took the form of “guiding principles,” OMB noted that agencies have wide discretion when treating paid leave as a reimbursable cost and stated it expects to see variance in how agencies implement section 3610, as a reflection of their different mission requirements, contractual arrangements, and funding situations. Subsequently, on July 14, 2020, OMB issued additional guidance that

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<sup>11</sup>Cited authorities include FAR § 52.242-15 (Stop-Work Order) and NASA FAR Supplement § 1852.242-72 (Denied Access to NASA Facilities).

<sup>12</sup>See Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, 133 Stat. 2317, div. D, tit. V, § 507 (2019).

addressed the two differences we identified in OMB and other agencies' guidance and clarified how agencies should handle each situation.<sup>13</sup>

- **Reimbursement time frame.** All selected agencies agree on the end date for reimbursement of paid leave costs—September 30, 2020—which is specified in section 3610. OMB, HHS, GSA, NASA, and DHS indicate that the date of the enactment of the CARES Act—March 27, 2020—is the start date for reimbursement. VA does not include an explicit start date in its guidance but requires compliance with OMB guidance. DOE, on the other hand, states that the date of the COVID-19 public health emergency declaration—January 31, 2020—is the start date.<sup>14</sup> Prior to August 2020, DOD also used this date, but it issued additional guidance on August 17, 2020 that revised the start date for reimbursement under section 3610 to March 27, 2020. DOD noted, however, that as section 3610 did not prohibit it from reimbursing a contractor for paid leave prior to that date using contract authorities otherwise available, contracting officers may, at their discretion, consider reimbursing such paid leave costs as other COVID-19 related costs.

OMB's July 14, 2020 guidance notes that section 3610 does not prohibit an agency from reimbursing a contractor for paid leave prior to the March date under contract authorities otherwise available to the agency, such as those available to keep national security professionals or skilled scientists ready to perform high-priority activities. However, it further notes that for the purposes of tracking and reporting, agencies should not identify such reimbursements as payments under section 3610. We did not find any records in FPDS-NG dated prior to March 27, 2020 that were identified as obligations using section 3610 authority.

- **Reimbursement of profit or fees.** In its initial discussion of what may be included in contractor billing rates used for reimbursement, OMB's April 17, 2020 guidance stated that these rates shall not include profit or fees. DOD and DOE also prohibit reimbursement of profit or fees, DHS prohibits reimbursement of

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<sup>13</sup>Office of Management and Budget, *Additional Guidance on Federal Contracting Resiliency in the Fight Against the Coronavirus Disease (COVID-19)*, OMB Memorandum M-20-27 (Washington, D.C.: July 14, 2020).

<sup>14</sup>In conditioning contractor reimbursement on "facility closures or other restrictions" and the inability to telework because "job duties cannot be performed remotely," section 3610 specifically refers to a time frame that takes place "during the public health emergency declared on January 31, 2020 for COVID-19." Pub. L. No. 116-136, § 3610.

profit, and VA requires compliance with OMB guidance. However, GSA allows contractors to include profit or fees in reimbursement requests in instances when excluding them would be impractical. Further, NASA notes that for firm-fixed-price contracts, contractors can bill for profit that is part of the original contract price, although not for additional profit. HHS alerted personnel to the OMB April 2020 guidance upon its release, and in later supplemental guidance stated that for certain contract types including time-and-materials and labor-hour, the minimum applicable billing rates will be prenegotiated rates.<sup>15</sup> Rates can be prenegotiated to include profit or fees.

OMB's July 14, 2020 guidance states that reimbursement "should" be limited to the actual cost incurred and "should not" include profit. This differs from OMB's more stringent original language, which was "shall not." Further, the guidance suggests ways in which agencies can lessen administrative burdens associated with excluding profit, such as making calculations using company or industry level data. In addition, the guidance notes that for certain contract types, including time-and-materials and labor-hour, assessment of the reasonableness of costs incurred under section 3610 will take into consideration prenegotiated contract billing rates.

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## Publicly Reported Obligations Data May Not Capture Full Amount of Paid Leave Reimbursements to Date, and Extent to Which Contractors Will Request Subsequent Reimbursements Is Uncertain

Contract obligations data reported in FPDS-NG, which was reviewed by agency officials, indicated the agencies in our review had made relatively few new obligations to reimburse contractors using section 3610 authority

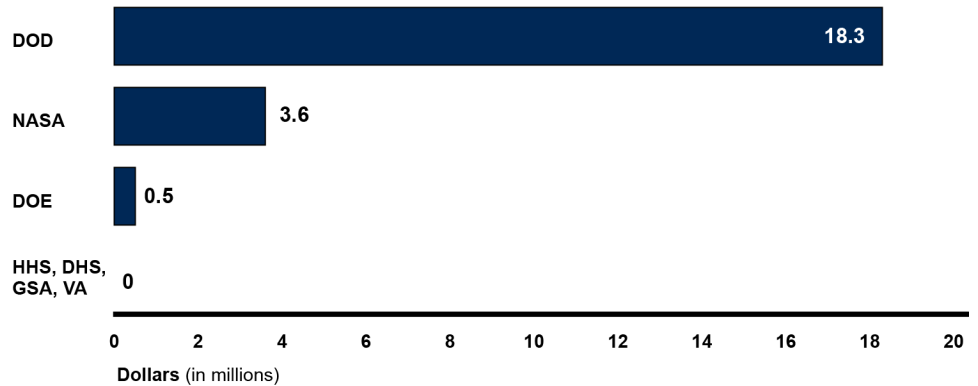
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<sup>15</sup>Section 3610 authorizes agencies to reimburse at "the minimum applicable contract billing rates not to exceed an average of 40 hours per week any paid leave, including sick leave," and does not specifically address reimbursement of profit or fees. Pub. L. No. 116-136, § 3610.

through July 2020.<sup>16</sup> Our work found, however, that DOE reimbursed contractors for almost \$550 million in paid leave costs—far more than its publicly reported new obligations for this purpose of \$0.5 million—primarily due to its stated use of existing contract obligations. In these cases, agency officials said they did not need to issue a contract modification to obligate additional funding and therefore these amounts would not be reported to FPDS-NG as section 3610 reimbursements.

As of July 20, 2020, only DOD, NASA, and DOE reported to FPDS-NG any obligations related to section 3610—approximately \$22 million on 39 contract actions. The other four agencies did not report any section 3610-related obligations. As shown in figure 2, DOD accounted for \$18.3 million of the obligations.

**Figure 2: Obligations Using Section 3610 Authority Reported to the Federal Procurement Data System-Next Generation by Selected Agencies from January 31 to July 20, 2020**



DOD = Department of Defense    DOE = Department of Energy    DHS = Department of Homeland Security  
NASA = National Aeronautics and Space Administration    HHS = Department of Health and Human Services    GSA = General Services Administration  
VA = Department of Veterans Affairs

Source: GAO analysis of agency-reviewed Federal Procurement Data System-Next Generation data. | GAO-20-662

Note: Agency officials reviewed Federal Procurement Data System-Next Generation (FPDS-NG) data included in the figure for accuracy. In some instances, these reviews identified FPDS-NG records reported in error as uses of section 3610 authority. In other instances, these reviews identified obligations reported in FPDS-NG as uses of section 3610 authority which reflected a combination of section 3610 and non-section 3610 obligations. Agency officials subsequently isolated the section 3610 portion by reviewing contract documents. In the case of the Department of Energy, agency officials noted additional amounts used for section 3610 reimbursements that were not reflected as such in FPDS-NG, primarily because the agency said it used existing contract obligations. As a result, obligations reported in FPDS-NG as uses of section 3610 authority may differ from actual obligations for this purpose.

<sup>16</sup>Our review does not include members of the Intelligence Community. The Intelligence Community does not report contract obligations to FPDS-NG.

OMB guidance notes that in order to track use of section 3610 authority, agencies should report modifications for section 3610 reimbursements to FPDS-NG by entering “COVID-19 3610” at the beginning of the Description of Requirements field.<sup>17</sup> Some agencies have taken steps to review the accuracy of FPDS-NG records indicating the use of section 3610 authority. During their review process, agency officials identified certain data reported to FPDS-NG as section 3610 obligations that differed from the actual amount obligated for that purpose. For example, officials from DOD’s Defense Pricing and Contracting office told us they review such FPDS-NG records to check that they are accurately coded and request corrections where necessary. According to DOD officials, these reviews identified instances in which obligations reported in FPDS-NG as uses of section 3610 authority actually reflected a combination of section 3610 and non-section 3610 obligations, such as for general services or test operations. DOD officials were subsequently able to isolate the section 3610 obligations by reviewing contract documents. As a result, DOD officials noted that they confirmed that, as of July 20, 2020, \$18.3 million of the \$108.8 million identified in FPDS-NG as section 3610 reimbursements was specifically obligated for that purpose. A DOD official stated that they are continuing to review obligations reported in FPDS-NG to ensure they are accurately recorded. In addition, officials from the DOD Office of Inspector General told us that they check FPDS-NG records coded as section 3610 against contract documents and discuss the records with cognizant contracting officers. Officials stated that their review has helped correct instances where use of section 3610 was reported in error.

Other agencies have established procedures, in addition to FPDS-NG reporting, to track and maintain visibility into use of section 3610 authority, including notification requirements and centralized tracking tools. For example, the Office of the Chief Procurement Officer at DHS requires heads of contracting activities to consult with this office before implementing any action under the CARES Act, including section 3610. GSA requires contracting officers to report any contract action using section 3610 authority to the Office of Government-wide Policy via a spreadsheet. NASA also tracks contractor requests centrally and, for 15 of its prime contractors, sent letters requesting information on the impact

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<sup>17</sup>VA guidance requires “CARES ACT” to be entered into this field in FPDS-NG. While VA requires compliance with OMB guidance, which includes entry of “COVID-19 3610” into this field, OMB’s terminology is not explicitly stated in VA’s guidance. According to a senior VA official, VA plans to clarify the requirement to use the OMB terminology in future guidance updates.



of COVID-19, including affected project names, contract numbers, and facility names and locations. DOE also maintains an internal reporting system that identifies the amount reimbursed to contractors for section 3610 paid leave costs, which includes the amount of reimbursements and the number of individuals on paid leave. DOE provided data that showed, as of July 31, 2020, it had reimbursed contractors nearly \$550 million for the costs of paid leave provided to more than 9,000 individuals. DOE officials explained that they were primarily able to use existing obligations for these reimbursements, rather than new obligations. As DOE officials said they did not need to issue a contract modification to obligate additional funding for these reimbursements, they were not reflected as section 3610 reimbursements in FPDS-NG.

Agency officials and industry associations cited a number of reasons for the level of obligations using section 3610 authority to date.

- **Authorization without an appropriation for section 3610 reimbursements.** While section 3610 states that, notwithstanding any other law, agencies may use funds made available by the CARES Act or any other act to reimburse contractors, the CARES Act does not appropriate additional funding specifically for that purpose. OMB's July 14, 2020 guidance states that section 3610 reimbursements must be made using an appropriation available to fund a fiscal year 2020 need. Officials from some agencies noted reluctance to use funding from other priorities—such as DOD's modernization and readiness efforts—for section 3610 reimbursements. Representatives from industry associations also expressed concerns about availability of funding and the possibility of denied reimbursement requests due to a lack of funding, even if contractors meet all other eligibility conditions. In addition to raising funding concerns, some industry associations have asked Congress to extend section 3610 authority past its current September 30, 2020 expiration date to December 31, 2020. As of August 2020, Congress had not taken action to extend this authority.
- **Use of other options to address COVID-19 disruptions.** OMB guidance notes the availability of other sources of financial relief for contractors in addition to section 3610, such as accelerated payments to small businesses, favorable tax changes, and use of loans under the Paycheck Protection Program to pay employees. Agency officials also cited the availability of other options—noted previously in this report—as a reason for low levels of section 3610 reimbursement requests. For example, DHS guidance

regarding section 3610 notes the possibility of equitable adjustments to contract prices using certain standard FAR clauses in response to COVID-19 disruptions. In guidance issued shortly before the enactment of the CARES Act, NASA noted existing authorities the agency would use to provide reimbursement for paid leave costs. This situation may also reduce the number of actions specifically identified in FPDS-NG as section 3610 reimbursements. A senior NASA official told us that if they were to use these existing authorities, then NASA would not report the amount obligated to reimburse contractors as a section 3610 obligation, even if it was provided for similar purposes. OMB's July 14, 2020 guidance instructs agencies not to identify reimbursements for paid leave made prior to the enactment of the CARES Act as payments under section 3610.

- **Perception of burdensome processes for requesting section 3610 reimbursements from DOD.** Representatives from industry associations noted that DOD's procedures for requesting section 3610 reimbursements could deter requests due to the scope and scale of required information. For example, in May 2020, DOD released draft guidance regarding the process for requesting reimbursements and invited feedback. Industry associations raised particular concerns that the process would require submission of a large volume of documentation before the contractors knew whether they would be eligible for reimbursement or if funds would be available. The associations suggested breaking the process into two steps, under which contractors could clarify eligibility and funding first and then proceed with collecting documentation once they knew their status. DOD issued finalized guidance on August 17, 2020, which encourages early engagement with a contracting officer when a contractor intends to submit a request for reimbursement under section 3610, including discussion of funding availability. This guidance also tailors the reimbursement request process to the circumstances of the contractor, depending on whether it seeks reimbursement in relation to a single contract, multiple contracts, or at the level of an entire business unit.

With the exceptions of DOD and DOE, agency officials we met with either did not expect a large amount or were uncertain about the level of future requests for reimbursements under section 3610. However, a senior DOD official told us that DOD expected section 3610 reimbursement costs to amount to billions of dollars, especially for its largest prime contractors, if additional funding becomes available via supplemental appropriations. In a June 2020 testimony before the House Armed Services Committee, the

Under Secretary of Defense for Acquisition and Sustainment quoted a large prime contractor as stating that the impact of section 3610 could be up to \$1.5 billion for that company and its associated suppliers. The same contractor also noted estimates in excess of \$1 billion for COVID-19 costs not related to section 3610. DOD officials told us that, in July 2020, several large defense contractors provided DOD with rough order of magnitude estimates of the impact that COVID-19-related actions had on their businesses—including the amount of paid leave they provided to their employees—that were generally in line with the aforementioned figure. DOD officials cautioned, however, that these estimates were not formal requests for reimbursement, nor were they accompanied by supporting documentation. DOE officials told us they also expected a significant cost impact due to contractor requests for section 3610 reimbursement.

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## Agency Comments

We provided a draft of this report to DOD, DOE, HHS, DHS, VA, GSA, NASA, and OMB for review and comment. DOE, HHS, DHS, VA, and GSA told us they had no comments on the draft report. DOD and NASA provided technical comments, which we incorporated as appropriate. OMB did not provide comments.

We are sending copies of this report to the appropriate congressional committees; the Secretaries of Defense, Energy, Health and Human Services, and Veterans Affairs; the Acting Secretary of Homeland Security; the Administrator of General Services and the Administrator of NASA; and the Director of OMB. In addition, the report will be made available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-4841. Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this report. Staff members making key contributions to this report are listed in appendix I.



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**Letter**

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Timothy J. DiNapoli  
Director, Contracting and National Security Acquisitions

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# Appendix I: GAO Contact and Staff Acknowledgments

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## GAO Contact

Timothy J. DiNapoli at (202) 512-4841 or [dinapolit@gao.gov](mailto:dinapolit@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Tatiana Winger (Assistant Director), Robert Bullock, Laura Greifner, Julia Kennon, Miranda Riemer, Zamir Ruli, Paige Singer, Rachel Stoiko, Roxanna Sun, and Carmen Yeung made key contributions to this report.

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# Appendix II: Accessible Data

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## Data Tables

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**Accessible Data for Obligations Using Section 3610 Authority Reported to the Federal Procurement Data System-Next Generation by Selected Agencies from January 31 to July 20, 2020**

<b>Agency</b>	<b>Dollars (in millions)</b>
DOD	18.3
NASA	3.6
DOE	0.5
HHS, DHS, GSA, VA	0

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Appendix II: Accessible Data

**Accessible Data for Figure 1: Timeline of Selected Agencies' Issuance of Section 3610 Implementation Guidance**

Entity	March	April	May	June	July	August
Coronavirus Aid, Relief, and Economic Security Act	03/27					
Office of Management and Budget		04/17			07/14	
Department of Defense	03/30	04/08 04/09 04/09 04/17 04/24 04/30	05/01		07/2	08/17 (5 documents)
Department of Energy		04/15 04/27 04/28				
Department of Health and Human Services				06/09 06/18	07/01	
Department of Homeland Security		04/11 04/21	05/13			
Department of Veterans Affairs		04/30				
General Services Administration		04/21 04/24				
National Aeronautics and Space Administration		04/02 04/06 04/07	05/04 05/15	06/04 06/04		

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Appendix II: Accessible Data

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**Accessible Data for Figure 2: Obligations Using Section 3610 Authority Reported to the Federal Procurement Data System-Next Generation by Selected Agencies from January 31 to July 20, 2020**

<b>Agency</b>	<b>Dollars (in millions)</b>
DOD	18.3
NASA	3.6
DOE	0.5
HHS, DHS, GSA, VA	0

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