



ELECTIONS

Preliminary Observations on State Laws and Perspectives on Holding Special Elections to Fill House Vacancies

Statement of Rebecca Gambler, Director, Homeland Security and Justice

Testimony

Before the Subcommittee on Modernization, Committee on
House Administration, House of Representatives

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Preliminary Observations on State Laws and Perspectives on Holding Special Elections to Fill House Vacancies

Why GAO Did This Study

The U.S. Constitution requires each state's governor to issue written orders for special elections to fill House vacancies. States are responsible for overseeing federal elections in their jurisdiction in accordance with state and federal laws.

In recent years, a growing number of threats have been made against members of Congress. In light of these threats and the COVID-19 pandemic, there has been increased interest in whether states are appropriately positioned to hold special elections to fill mass House vacancies.

This statement is based on GAO's ongoing review of state capabilities to hold such elections. It provides preliminary observations on (1) state laws related to holding special elections to fill House vacancies and (2) the perspectives of state election officials on the capabilities of, and challenges facing, states in holding special elections to fill House vacancies consistent with federal law.

To develop these preliminary observations, GAO analyzed laws in all 50 states related to holding special elections to fill House vacancies. In addition, GAO conducted a web survey of state election officials in all 50 states to obtain their perspectives on holding special elections consistent with federal law. As of the beginning of September 2024, 27 states have responded to the survey. GAO also reviewed relevant reports and interviewed subject matter experts from four organizations, selected based on their work on this topic.

What GAO Found

Following the terrorist attacks on September 11, 2001, Congress passed and the President signed a law in 2005 that generally requires states to hold special elections within 49 days of the Speaker of the U.S. House of Representatives (House) announcing that there are more than 100 vacancies in the House. GAO's preliminary analysis identified nine states that have laws for holding special elections to fill House vacancies that adopt aspects of the federal law, such as those related to the 49-day time frame. In addition, almost all of the other 41 states have provisions in their laws that address holding special elections to fill vacancies in the House. Examples of the types of timing provisions in these laws include specifying the number of days within which states are required to hold the election or giving the governor discretion to order an election within a specific time frame.

U.S. Capitol Building, where the U.S. House of Representatives Assembles



Source: W.Scott McGill/stock.adobe.com. | GAO-24-107789

GAO surveyed state election officials in all 50 states to obtain their perspectives on holding special elections consistent with the federal law. Based on GAO's preliminary analysis of the survey results, 15 of the 27 officials who responded to the survey so far reported that they were not aware of the federal law prior to hearing about GAO's study. In addition, officials identified a range of challenges related to holding special elections consistent with the federal law. For example, officials reported that it would be difficult to select candidates within the time frames required by the law. Officials also noted challenges related to preparing and printing ballots, identifying polling places and poll workers, and transmitting absentee ballots to uniformed services and overseas voters.

State election officials reported that the challenges they identified could affect the accuracy and availability of ballots, pamphlets, and other voting materials; public perceptions of the election; and voting access, such as whether voters have sufficient time to request absentee ballots. However, many officials noted that they would be able to hold special elections consistent with the federal law. Additionally, officials identified state practices that may help them hold such elections. For example, officials reported that in some cases, states assign responsibility for candidate selection to political parties and noted that this could be done relatively quickly under a special election.

Chairwoman Bice, Ranking Member Kilmer, and Members of the Subcommittee:

Thank you for the opportunity to discuss preliminary observations from our ongoing work on state capabilities to hold special elections in the event of mass vacancies in the U.S. House of Representatives (House).

Following the terrorist attacks on September 11, 2001, Congress passed and the President signed a law in 2005 that generally requires states to hold special elections to fill House vacancies within 49 days of the Speaker of the House announcing that there are more than 100 vacancies in the House.¹ Under the statute, this is referred to as “extraordinary circumstances.”²

In recent years, a growing number of threats have been made against members of Congress. In 2023, the Chief of the U.S. Capitol Police testified to the Committee on House Administration that, from 2017 to 2023, the number of such threats rose by about 400 percent.³ Other threats, such as those posed by pandemics, also have the potential to cause mass vacancies in the House. In light of these threats, there has been increased interest in whether states are appropriately positioned to hold special elections to fill mass House vacancies.

My statement today is based on our ongoing review of state capabilities to hold special elections to fill vacancies in the House consistent with federal law.⁴ Specifically, this statement provides preliminary observations on

1. state laws related to holding special elections to fill House vacancies and how they compare with the federal law to hold such elections in the event of extraordinary circumstances; and
2. the perspectives of state election officials on the capabilities of, and challenges facing, states in holding special elections to fill House vacancies consistent with federal law.

To develop our preliminary observations, we identified and analyzed laws in all 50 states related to holding special elections to fill House vacancies and compared these laws with the federal law on filling vacancies in extraordinary circumstances.⁵ In addition, we conducted a web survey of state election officials in all 50 states to gather (1) information about their awareness of the federal law and (2) their perspectives on the challenges states might face in holding special elections to fill House vacancies consistent with the federal law and how state election administration practices might help states meet the time frames in the law. As of the beginning of

¹See Legislative Branch Appropriations Act, 2006, Pub. L. No. 109-55, tit. III, § 301, 119 Stat. 565, 588 (2005) (pertinent portion codified at 2 U.S.C. § 8(b)). According to the law, the requirements related to holding special elections also apply to the District of Columbia and listed U.S. territories, but vacancies in these jurisdictions are not to be included by the Speaker in determining whether vacancies in state representation in the House exceed 100.

²2 U.S.C. § 8(b)(4)(A).

³J. Thomas Manger, Chief of Police, U.S. Capitol Police, *Looking Ahead Series: Oversight of the United States Capitol Police*, testimony before the Committee on House Administration, 118th Cong., 1st sess., May 16, 2023.

⁴Our review was requested by the Chairs and Ranking Members of the Committee on House Administration and its Subcommittees on Modernization, Elections, and Oversight.

⁵See 2 U.S.C. § 8(b).

September 2024, 27 states have responded to our survey, for a response rate of 54 percent.⁶ We also reviewed relevant documents (e.g., reports and Congressional testimony statements) and interviewed subject matter experts from four organizations, selected based on their work on this topic, to help augment state perspectives.⁷

We are conducting the work upon which this statement is based 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.

Background

Overview of State and Federal Election Administration

All levels of government share responsibility in the U.S. election process, and the election system is highly decentralized. States are responsible for the administration of their own elections as well as federal elections. Accordingly, states regulate various aspects of elections including, for example, registration procedures, absentee and early voting requirements, and Election Day procedures. States support local election jurisdictions in administering elections and oversee the conduct of elections in accordance with state and federal laws.

At the federal level, Congress's authority to regulate elections derives from various constitutional sources, depending on the type of election.⁸ Congress has passed federal legislation to address voter registration, voter identification, absentee voting for uniformed service members and overseas citizens, accessibility provisions for elderly individuals and people with disabilities, and prohibitions against discriminatory practices, among other issues. For example, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), as amended, generally requires states to send absentee ballots to uniformed services and overseas voters at least 45 days before an election for a federal office.⁹

⁶We sent our survey to state election officials on July 26, 2024.

⁷The selected organizations were the American Enterprise Institute, Bipartisan Policy Center, U.S. Election Assistance Commission, and National Conference of State Legislatures.

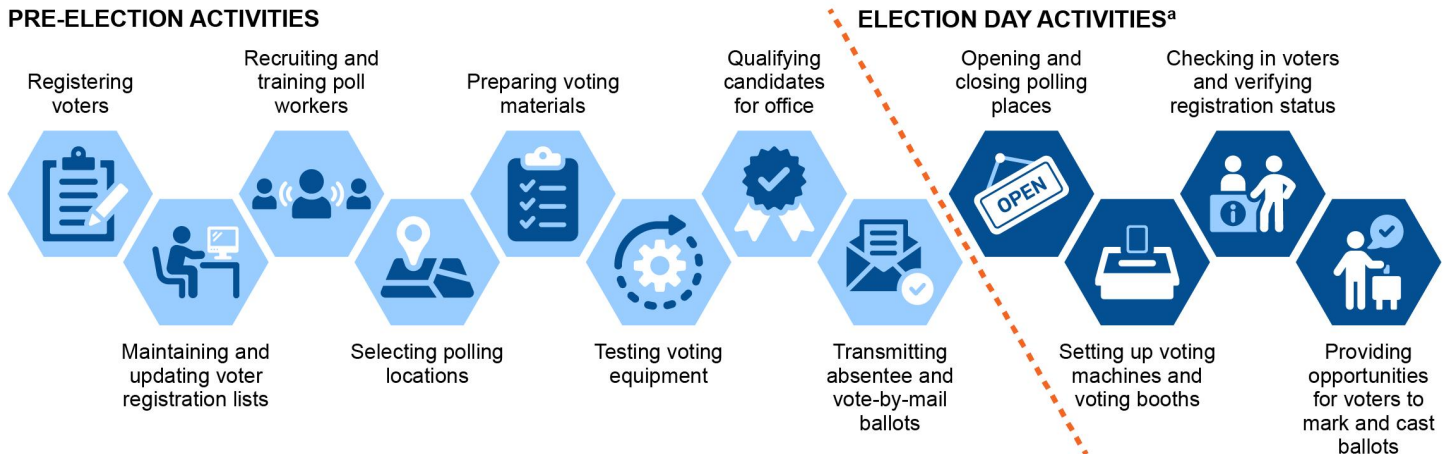
⁸Congress's authority to regulate congressional elections derives primarily from Article I, Section 4, Clause 1 of the U.S. Constitution (known as the Elections Clause).

⁹The Military and Overseas Voter Empowerment Act, enacted in 2009, amended UOCAVA to establish new absentee ballot procedures, including the 45-day requirement, that states must follow in all federal elections. According to the act, if the chief state election official determines that the state is unable to meet the 45-day requirement due to an undue hardship, the official must request the Department of Defense to grant a waiver to the state for that election. Pub. L. No. 111-84, div. A, tit. V, subtit. H, 123 Stat. 2190, 2318-35; see 52 U.S.C. § 20302(a)(8)(A), (g).

Process for Holding Elections

The process for holding elections includes pre-election and Election Day activities.¹⁰ Figure 1 shows examples of these activities.

Figure 1: Examples of Pre-Election and Election Day Activities



Source: GAO analysis of elections-related reports; Icons-Studio/stock.adobe.com (icons). | GAO-24-107789

Notes: These examples are not presented in sequential order and do not constitute an all-inclusive list of election administration activities. In addition, certain pre-election activities may overlap with Election Day activities, such as in states that offer same-day voter registration, which allows any qualified resident of the state to register to vote and cast a ballot at the same time. Further, these activities may vary for states that have all-mail ballot or vote-by-mail elections. According to the National Conference of State Legislatures, as of January 2024, eight states allow all elections to be conducted entirely by mail, wherein ballots are automatically sent to every registered voter. These states may also provide options for in-person voting, both prior to and on Election Day.

^aElection Day activities also apply to early in-person voting, which allows registered voters to cast their vote in person before Election Day without providing an excuse, either at one specific location or at one of several locations.

Federal Time Frames for Filling House Vacancies in Extraordinary Circumstances

The Constitution requires each state’s governor to issue written orders for special elections to fill House vacancies.¹¹ In 2005, Congress passed a law that addresses holding special elections when the Speaker of the House announces that there are more than 100 vacancies in state representation in the House.¹²

In such extraordinary circumstances,¹³ the law requires that states in which vacancies exist do the following:

- Hold a special election within 49 days, unless within 75 days after the Speaker’s announcement that the vacancy exists, there is to be (a) a regularly scheduled general election for the same office or (b)

¹⁰Election administration also includes post-election activities, such as securing equipment and ballots, transferring physical ballots or records of vote counts to a central location for counting, determining the outcome of the election, publishing unofficial results, certifying official election results, and performing recounts, if required.

¹¹U.S. Const. art. I, § 2, cl. 4.

¹²See 2 U.S.C. § 8(b).

¹³*Id.* § 8(b)(4)(A).

another special election for the same office pursuant to a written order issued by the state's chief executive prior to the date of the Speaker's announcement.¹⁴

- Determine the candidates who will run by (a) political party nominations within 10 days of the Speaker's announcement that the vacancy exists or (b) any other method, including holding primary elections, that ensures states can meet the 49-day deadline for holding the special election.¹⁵
- Ensure to the greatest extent practicable that absentee ballots are transmitted to uniformed services and overseas voters within 15 days of the Speaker's announcement that the vacancy exists.¹⁶

State Laws for Holding Special Elections to Fill House Vacancies

Our preliminary analysis identified nine states—Arizona, California, Colorado, Georgia, Indiana, Nebraska, New Mexico, North Dakota, and South Dakota—that have laws for holding special elections to fill House vacancies in extraordinary circumstances. These state laws adopt aspects of the federal law, such as those related to the 49-day time frame and candidate nominations. Below are examples of state laws for holding special elections in the event that the Speaker of the House announces that there are more than 100 vacancies in the House.

- Arizona's state law generally requires a special election to fill a vacancy in the House to be held not more than 49 days after the declaration of the vacancy. There is an exception when a regularly scheduled general election or previously scheduled special general election is held within 75 days after the declaration of the vacancy.¹⁷
- Colorado's state law requires a special election to fill a vacancy in the House to be conducted on a Tuesday not more than 49 days after the declaration of the vacancy, unless a general election is to be held within 75 days of the declaration.¹⁸ In addition, the law requires political parties to nominate candidates no later than 10 days after the declaration of the vacancy.¹⁹ It further provides the Secretary of State the authority to promulgate rules as may be necessary to administer and enforce any provision of the state law or to adjust statutory deadlines to ensure that a special election is held within the time required by the state law and the federal law.²⁰

Our preliminary analysis also shows that 41 states do not appear to have laws that adopt the federal law for their state. Almost all of these states have provisions in state law that address holding special elections to fill

¹⁴*Id.* § 8(b)(2).

¹⁵*Id.* § 8(b)(3).

¹⁶*Id.* § 8(b)(5)(A). The federal law also requires states to accept and process valid ballots or other election material from uniformed services and overseas voters so long as the ballot or other material is received by the appropriate state election official not later than 45 days from the date of transmittal. *Id.* § 8(b)(5)(B).

¹⁷Ariz. Rev. Stat. § 16-222(E).

¹⁸Colo. Rev. Stat. § 1-4-401.5(1).

¹⁹*Id.* § 1-4-401.5(2).

²⁰*Id.* § 1-4-401.5(4).

vacancies in their representation in the House.²¹ Below are examples of timing provisions in the laws for holding special elections to fill vacancies in the House, such as specifying the number of days within which to hold an election or giving the governor discretion to order an election within a specific time frame.

- Alaska's state law requires the governor to call a special primary election to be held not less than 60 and no more than 90 days after the vacancy occurs.²² Subsequently, the governor must call for a special election on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election.²³
- Iowa's state law requires the governor to order a special election no later than 5 days from the date the vacancy exists with no less than 40 days' notice of the election if a vacancy occurs in the House when it is in session or will convene prior to the next general election.²⁴ In addition, the special election must be held on a Tuesday and not be held the same day as a school election within the district.²⁵
- Delaware's state law gives the governor discretion on whether to appoint a day for holding a special election before the next general election after the House vacancy exists.²⁶ If the governor appoints a day for holding a special election, the governor must issue a written order of election to the State Department of Elections commanding the department to hold the election on the appointed day.²⁷ The written order must be delivered to the department at least 60 days before the day appointed for holding the election.²⁸

State Election Officials' Perspectives on Holding Special Elections Consistent with Federal Law

Reported Awareness of Federal Law on Filling House Vacancies

In our survey, we asked state election officials if, prior to hearing about our study, they were aware of the federal law that addresses holding special elections in the event of extraordinary circumstances. As of the beginning of September 2024, 27 state election officials provided responses. Our preliminary analysis indicates that 15 of these officials said that they had not been aware of the federal law. Ten respondents said they were

²¹GAO's preliminary analysis indicates that 49 states have provisions in state law that address holding a special election to fill vacancies in the House. This includes the 9 states that have laws that adopt and the 40 states that do not have laws that adopt 2 U.S.C. § 8(b). One state has not enacted any law we identified related to holding a special election to fill a House vacancy.

²²Alaska Stat. § 15.40.140.

²³*Id.* Alaska's law also states that, in an election year in which a candidate for that office is not regularly elected, if a vacancy occurs on a date not less than 60 nor more than 90 days before the primary election, the special primary election shall be held on the date of the primary election and the special election is to be held on the date of the general election. If the vacancy occurs on a date not less than 60 nor more than 90 days before the general election, the special primary election shall be held on the date of the general election and the special election shall be held on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election. *Id.*

²⁴Iowa Code § 69.14.

²⁵*Id.*

²⁶Del. Code Ann. tit. 15, § 7302.

²⁷*Id.* §§ 101(6), 7303.

²⁸*Id.* § 7303.

already aware of it.²⁹ Eight of those 10 said they were aware of all three time frame requirements in the federal law related to holding a special election within 49 days, determining the candidates who will run,³⁰ and transmitting absentee ballots to uniformed services and overseas voters within 15 days.³¹

Perspectives on Challenges Related to Holding Special Elections Consistent with Federal Law

State election officials we surveyed and subject matter experts we interviewed from four organizations identified a range of challenges that states may face in holding special elections consistent with the requirements in federal law. Based on our preliminary analysis, below are examples of challenges they identified:

- **Selecting candidates.** One challenge that state election officials identified in their survey responses was about selecting candidates—that, in some cases, state laws and procedures do not currently allow for candidate selection that would meet the time frame for holding a special election required by federal law. For example, officials reported that because their states require primary or runoff elections, they would need to hold multiple elections in the 49-day window prescribed by federal law, and the state time frames for these elections might create challenges in meeting the federal time frame. According to representatives from one organization we interviewed, determining the candidates who will run is one of the most important parts of the election process because it drives the time frames for printing ballots and programming voting machines.
- **Preparing and printing ballots.** State election officials also reported challenges related to preparing and printing ballots in time to hold a special election consistent with federal law. For example, an official from an all-mail ballot state said it could take 45 days after candidates are certified before ballots are printed and mailed to voters, and another respondent noted that vendors may not be able to meet the needs of multiple jurisdictions all at once on short notice. In addition, representatives from one organization we interviewed said there may be supply chain issues with getting ballot paper stock, as few vendors create this type of paper and regular paper cannot be used. Representatives from another organization also told us that states had previously encountered shortages of ballot paper in regularly scheduled elections.
- **Identifying polling places and poll workers.** Another challenge state election officials noted in responding to our survey was related to identifying polling locations and poll workers. More specifically, officials reported that they would expect to encounter difficulties identifying suitable polling places and recruiting and training a sufficient number of poll workers. For example, state election officials noted that schools normally serve as polling places in their states, and regularly scheduled elections are accommodated in school calendars, but expedited special elections may not be similarly accommodated.
- **Voting for uniformed services and overseas voters.** State election officials also noted challenges related to sending absentee ballots to these voters subject to the requirements in the Uniformed and

²⁹Additionally, two respondents answered “don’t know” to our question asking if they were aware of 2 U.S.C. § 8(b) prior to hearing about our study.

³⁰Candidates are to be determined by political party nomination within 10 days of the Speaker’s vacancy announcement or by any other method that ensures the special election occurs within 49 days of such announcement. 2 U.S.C. § 8(b)(3).

³¹Two of the 10 respondents who reported that they were aware of the federal law prior to our study answered “Don’t know” regarding their awareness of at least one of the three time frame requirements in the law.

Overseas Citizens Absentee Voting Act (UOCAVA), particularly the requirement that these voters receive ballots at least 45 days before a federal election. For example, one official reported that meeting the 45-day requirement in UOCAVA would be difficult, as selecting candidates in time for ballot production “would be a

very tight window of time.” Another official reported that holding a special election consistent with the requirements in the federal law for filling House vacancies in extraordinary circumstances would only be possible if the federal law “overrides” the 45-day requirement in UOCAVA. Similarly, a third official said that they would not have enough time to hold an election in 49 days and still meet the requirements in UOCAVA.

State election officials we surveyed and experts we interviewed also identified time and resource challenges related to administering special elections consistent with federal law. These challenges include educating voters and programming and testing voting machines.

In addition, officials we surveyed and experts we interviewed described the effects that the challenges they identified may have on special elections held to meet the requirements in federal law. For example:

- **Accuracy and availability of voting materials.** In responding to our survey, state election officials identified potential challenges with the accuracy and availability of voting materials, noting that with reduced time to prepare ballots and related materials, errors in the text of these materials may occur. An official also reported that errors may occur during the programming and testing of voting machines. In addition to these issues, officials reported that it may be difficult to produce some materials normally required by state law, such as translations of ballots and pamphlets, within the federal time frames.
- **Public perceptions of the election.** State election officials reported a range of perspectives related to potential public perception of an expedited special election. For example, one official noted that an expedited special election would create an opportunity for false information to spread and that this could damage confidence in both the process and the results. Another official reported that the challenges they identified in our survey related to holding special elections under the federal law, such as selecting candidates, preparing and printing ballots, or identifying polling places and poll workers, could cast doubt on the election process and “result in a challenge to the legitimacy of the election.” Another challenge officials noted in responding to our survey was that their state laws may have time frames for holding special elections that differ from the federal requirement, and one state official reported that diverging from state law may harm the credibility of an election.
- **Voting access.** Another challenge state election officials identified in responding to our survey was related to voting access. For example, one official shared the perspective that there may not be enough time for overseas voters to apply for an absentee ballot. The same official noted, more broadly, that compressed timelines generally could “disenfranchise voters.” Representatives from one organization we interviewed also noted that the shortened time frames may affect the number and location of available polling places and whether states would have enough time to prepare voting equipment accessibility mechanisms, such as audio assistance.

Perspectives on Practices That May Help States Hold Special Elections Consistent with Federal Law

Based on our preliminary analysis, notwithstanding the challenges they identified, many state election officials noted in their responses to the open-ended questions in our survey that they believed they could hold special

elections consistent with the requirements in federal law. In addition, survey respondents and experts we interviewed identified several policies and practices that states either currently utilize or could adopt to help states meet the time frames in federal law for holding special elections in the event of extraordinary

circumstances. For example:

- **Candidate selection practices.** State election officials reported that, in some cases, states have procedures for selecting candidates for special elections that could be completed faster than holding primaries. One official reported that their state could accommodate online candidate filing for the special election and that doing so means candidates could be selected in 8 business days. An official from a state where signatures are required to file for candidacy reported that the required number of signatures in their state was relatively low, which could help the state meet the requirements in federal law. In addition, officials reported that, in some cases, states assign candidate selection responsibility to political parties and noted that this could be done relatively quickly under a special election.
- **Vote centers.** Experts we interviewed told us that vote centers, where ballots for all precincts in a local jurisdiction are available to all voters so that they can vote at any center of their choosing, could help give state election officials flexibility in conducting an election on short notice.³² One respondent to our survey of state election officials reported that their office could stand up vote centers within 49 days in their state. According to representatives from one organization, the use of vote centers might help reduce the number of voting locations election officials need to identify, reduce the number of voting machines that need to be programmed, and allow for printing ballots on demand.

We will complete our review of these topics and issue a final report in the coming months.

Chairwoman Bice, Ranking Member Kilmer, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions concerning this statement, please contact Rebecca Gambler, Director, Homeland Security and Justice, at (202) 512-8777 or gablerr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. In addition to the contact named above, Tom Jessor (Assistant Director), Johanna Wong (Analyst in Charge), Christine Catanzaro, Eric Hauswirth, Amanda Miller, Sasan J. “Jon” Najmi, Meghan Squires, Janet Temko-Blinder, Ian Toller-Clark, Mary Turgeon, Eamon Vahidi, Morning Washburn, and Christopher Zubowicz made key contributions to the testimony.

³²Various states provide local election jurisdictions the discretion to allow voters to cast their ballot at vote centers. Vote centers were previously used by some states during the COVID-19 pandemic to address election administration challenges. For further discussion of vote centers’ use during the pandemic, see GAO, *2020 Elections: State and Local Perspectives on Election Administration during the COVID-19 Pandemic*, [GAO-22-104731](https://www.gao.gov/products/GAO-22-104731) (July 11, 2022).

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