



July 2021

COVID-19 CONTRACTING

Contractor Paid Leave Reimbursements Could Provide Lessons Learned for Future Emergency Responses

Why GAO Did This Study

In March 2020, Congress passed the CARES Act, which provides over \$2 trillion in emergency assistance for those affected by COVID-19.

Section 3610 of the CARES Act enables agencies, at their discretion, to reimburse contractors for paid leave provided to their 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 pandemic. The CARES Act also includes a provision for GAO to review federal contracting pursuant to authorities provided in the Act.

In September 2020, GAO found that agencies had not made much use of section 3610 authority as of July 2020, and expectations of future use varied.

This report (1) examines how selected federal agencies have used section 3610 authority and (2) presents selected contractors' perspectives on COVID-19 paid leave reimbursement. GAO reviewed guidance and data and interviewed cognizant officials from four agencies with contract obligations greater than \$10 billion in fiscal year 2019. GAO also selected a non-generalizable sample of 15 contractors that received or requested section 3610 reimbursements from one or more of the selected agencies and conducted semi-structured interviews of contractor representatives.

What GAO Recommends

OMB should collect and share lessons learned from federal agencies' implementation of COVID-19 paid leave reimbursement. OMB concurred with this recommendation.

View [GAO-21-475](#). For more information, contact Timothy J. DiNapoli at (202) 512-4841 or dinapolit@gao.gov.

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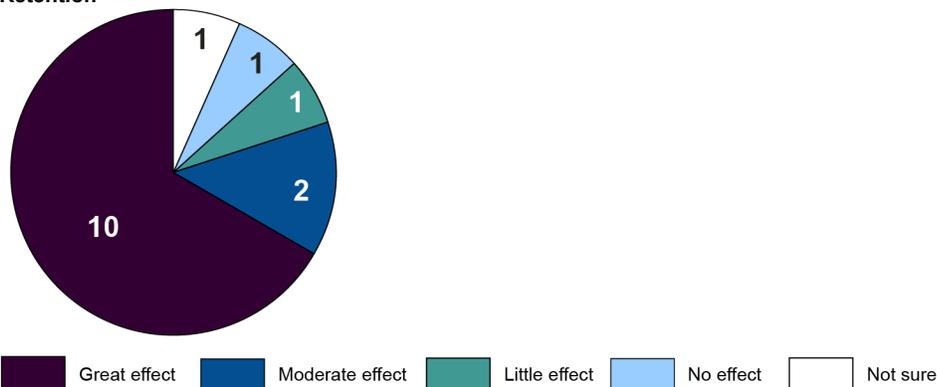
What GAO Found

To help government contractors keep their workforce in a ready state during the COVID-19 pandemic, section 3610 of the CARES Act generally authorized government agencies to reimburse contractors for paid leave provided to contractor personnel and subcontractors during the national emergency. Section 3610 did not appropriate specific funding for this purpose. The four agencies GAO reviewed—the Departments of Defense, Energy, and Homeland Security, and NASA—reported use of section 3610 authority totaling at least \$882.8 million over 14 months. The extent to which the agencies used the authority varied, from \$1.4 million at Homeland Security to \$760.7 million at Energy.

Further, Defense officials estimated that defense contractors have more than \$4 billion in paid leave costs that are potentially eligible for reimbursement under section 3610. Defense officials also noted, however, that the department does not plan to reimburse this full amount using existing funding. Agencies also based their reimbursement decisions on the nature of the work performed by contractors, such as whether telework was an option.

Twelve out of the 15 contractors GAO interviewed reported that paid leave reimbursement had a great or moderate effect on their ability to retain employees (see figure), in particular those with specialized skills or clearances.

Selected Contractors' Views on the Effect of Paid Leave Reimbursement on Workforce Retention



Source: GAO analysis of contractor representative interview responses. | GAO-21-475

Given the urgency of the pandemic, agencies prioritized quick implementation of section 3610 over a more deliberative process, resulting in variations such as how agencies tracked use of the authority. Officials from all four agencies said that they either have captured or intend to capture lessons learned from implementing section 3610 and are willing to share these with other federal agencies. However, the Office of Management and Budget (OMB)—which coordinates government-wide contracting policy—has not collected and shared lessons learned. With coordination from OMB's Office of Federal Procurement Policy, the government could seize an opportunity to enhance implementation of paid leave reimbursement provisions that may be enacted as part of rapid federal responses to future emergencies.

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Abbreviations

COVID-19	Coronavirus Disease 2019
DHS	Department of Homeland Security
DOD	Department of Defense
DOE	Department of Energy
FAR	Federal Acquisition Regulation
FPDS	Federal Procurement Data System
NASA	National Aeronautics and Space Administration
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget

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July 28, 2021

Congressional Addressees

The Coronavirus Disease 2019 (COVID-19) pandemic has resulted in catastrophic loss of life and substantial damage to the global economy, stability, and security. On March 11, 2020, the World Health Organization characterized COVID-19 as a pandemic, and 2 days later the U.S. President declared COVID-19 a national emergency. In response to this unprecedented global crisis, in March 2020 Congress passed, and the President signed into law, the CARES Act, which provided over \$2 trillion in emergency assistance and health care response for individuals, families, and businesses affected by COVID-19.¹

The CARES Act included a provision for GAO to provide a comprehensive audit and review of federal contracting pursuant to authorities provided in the Act.² Section 3610 of the CARES Act generally permits federal agencies to reimburse contractors who provide paid leave to their employees and subcontractors who are unable to access work sites due to facility closures and other restrictions and who cannot telework during the COVID-19 pandemic. This authority currently applies through September 30, 2021, following a number of extensions. While authorizing such reimbursements, Congress did not appropriate specific funding to agencies to cover these expenses. Rather, it allowed agencies to use funding made available by the CARES Act or any other act. In September 2020, we reported on section 3610 implementation guidance

¹Pub. L. No. 116-136, 134 Stat. 281 (2020). As of March 31, 2021, laws that make appropriations or provide some other relief in response to the COVID-19 pandemic include: the American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021); the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020); the Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620 (2020); the 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 (2020).

²We regularly issue government-wide reports on the federal response to COVID-19. For the latest report, see GAO, *COVID-19: Continued Attention Needed to Enhance Federal Preparedness, Response, Service Delivery, and Program Integrity*, [GAO-21-551](#) (Washington, D.C.: July 19, 2021). Our next government-wide report will be issued in October 2021 and will be available on GAO's website at <https://www.gao.gov/coronavirus>.

issued by selected agencies, as well as the extent to which those agencies reported use of the authority.³

This report (1) examines how selected federal agencies have used section 3610 authority and (2) presents selected contractors' perspectives on COVID-19 paid leave reimbursement.

To examine how selected federal agencies have used section 3610 authority, we identified the seven federal agencies with contract obligations greater than \$10 billion in fiscal year 2019. We reviewed these agencies' use of section 3610 authority as of July 20, 2020, as reported to the Federal Procurement Data System (FPDS), and selected the three agencies with reported use. These three agencies were the Department of Defense (DOD), Department of Energy (DOE), and the National Aeronautics and Space Administration (NASA). As a point of comparison, we also selected one agency—the Department of Homeland Security (DHS)—that had not reported use of section 3610 authority as of July 20, 2020. For these four agencies, we gathered and analyzed guidance regarding section 3610 and data on its use either collected by agencies or reported to FPDS from January 31, 2020, through March 31, 2021; and interviewed or received written responses from cognizant agency officials.⁴ We also interviewed officials from the Office of Management and Budget's (OMB) Office of Federal Procurement Policy (OFPP) due to this agency's role in coordinating government-wide contracting policy. To assess the reliability of data from agencies and FPDS, we reviewed related documentation, such as data validation rules, and interviewed knowledgeable agency officials. We determined the data were sufficiently reliable for the purposes of describing the extent to which selected agencies reported use of section 3610 authority.

To identify selected contractors' perspectives on COVID-19 paid leave reimbursement, we selected a non-generalizable sample of 15 prime contractors that, according to agency data, have received or requested section 3610 reimbursements from one or more agencies in this review.

³GAO, *COVID-19 Contracting: Observations on Contractor Paid Leave Reimbursement Guidance and Use*, [GAO-20-662](#) (Washington, D.C.: Sept. 3, 2020).

⁴According to the General Services Administration, FPDS is the federal government's authoritative source for contract data. Contracts whose estimated value is \$10,000 or more are reported to FPDS, as well as every modification to those contracts, regardless of dollar value. On October 17, 2020, the FPDS reports module was retired and the <https://SAM.gov> Data Bank is now the only place to create and run both standard and ad hoc reports on federal contract data.

We selected contractors to reflect a range of company sizes, ownership structures, and product and service offerings. We conducted semi-structured interviews of cognizant contractor representatives about their experiences seeking reimbursement from different agencies and reviewed available company financial information. We also interviewed representatives from industry associations about contractors' experiences seeking reimbursement from different agencies, and about why some contractors have not requested reimbursements. Additionally, we interviewed or received written responses from cognizant representatives from four contractors identified as having not yet requested section 3610 reimbursements from agencies in our review at the time of selection. See appendix I for more information on our objectives, scope, and methodology, including a listing of the contractors and industry associations that participated in this review.

We conducted this performance audit from October 2020 to July 2021 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

Contracting Responses to COVID-19

The CARES Act was enacted on March 27, 2020. 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. This authority originally applied through September 30, 2020, but was subsequently extended until December 11, 2020, then March 31, 2021, and then again through September 30, 2021.⁵ While authorizing such reimbursements, section 3610 did not appropriate any additional funding to agencies to cover these expenses. Use of this authority is at the government's discretion and not mandatory, a point emphasized in implementation guidance subsequently issued by OMB and selected agencies. Several industry associations had advocated for prior

⁵Pub. L. No. 116-136, 134 Stat. 281, § 3610; Continuing Appropriations Act, 2021, and Other Extensions Act, Pub. L. No. 116-159, 134 Stat. 709, § 140 (2020); Pub. L. No. 116-260, 134 Stat. 1182, § 1002; Pub. L. No. 117-2, 135 Stat. 4, § 4015.

extensions of section 3610 authority as well as for supplemental funding for section 3610 reimbursements.

While not the focus of this report, the federal government took other steps to support contractors during the pandemic. For example, to help companies manage cash flow, DOD increased progress payment rates.⁶ Congress also made additional financial relief available through the Paycheck Protection Program, designed to provide loans for small businesses to keep their workers on payroll, and included in the CARES Act an employee retention tax credit for businesses.⁷

Contract Costs

Federal agency contract spending on products and services in fiscal year 2020 totaled over \$660 billion. DOD is responsible for almost two-thirds of this amount, for services including professional engineering/technical services and general health care, and for products including fixed wing aircraft, combat ships, and landing vessels. Civilian agencies contract for various services, including professional services and maintenance and security of their buildings, and acquire products such as information technology hardware and software. Federal agencies typically contract with private-sector companies to acquire these products and services.

The price of a contract typically consists of various elements such as the cost of materials, labor costs, and profit or fee. Contractors' labor costs include the costs of paid leave such as sick leave, holidays, and vacations. These costs are generally considered fringe benefits and may be reimbursed on certain contracts to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor. These indirect costs are typically spread across multiple contracts at a particular contractor business

⁶Through progress payments, DOD can finance certain contractor expenses as work progresses, including financing payments made to subcontractors. Contract financing assists the contractor in managing expenses such as material, labor, and overhead. Progress payments based on costs are determined as a percentage of the costs incurred by the contractor. Prior to the pandemic, DOD paid 80 percent of incurred costs of large businesses and 90 percent of incurred costs of small businesses. However, in response to COVID-19, in March 2020 DOD increased the customary progress payment rates for eligible contractors to 90 percent for large businesses and 95 percent for small businesses. GAO has ongoing work regarding DOD's use of the increased rate of progress payments during the COVID-19 national emergency. For additional information on progress payments, see GAO, *Contract Financing: DOD Should Comprehensively Assess How Its Policies Affect the Defense Industry*, [GAO-19-406](#) (Washington, D.C.: June 27, 2019).

⁷Pub. L. No. 116-136, §§ 1102, 1106, 2301; 85 Fed. Reg. 20811, 20814 (Apr. 15, 2020).

division, as opposed to direct costs such as the labor and material costs that can be associated with and allocated to a specific contract.⁸

Prior GAO and Agency
Offices of Inspector
General Reports on
Section 3610

In September 2020, we reported that, in general, agencies had not made much use of section 3610 authority to reimburse contractor paid leave costs as of July 2020. Agencies' expectations of future requests from contractors varied and depended on factors including availability of funding.⁹ We also found that, in several instances, agencies identified other contracting authorities that could be used in place of or in addition to section 3610. For example, DHS guidance identified certain standard Federal Acquisition Regulation (FAR) clauses through which equitable adjustments to contract prices in response to COVID-19 disruptions could be made.¹⁰ Similarly, NASA guidance identified some existing FAR and NASA FAR Supplement clauses through which the agency could reimburse paid leave costs.¹¹ DOD guidance outlined additional ways to address the effect 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. OMB advised agencies to report contract modifications using section 3610 authority to FPDS, using terminology provided by OMB. However, in that same report, we found that not all agencies' section 3610 reimbursements were reported to FPDS as such. For example, DOE officials told us they did not need to issue a contract modification to obligate additional funding for paid leave reimbursement.

Offices of Inspector General at several agencies have reported on or are assessing the implementation of section 3610. For example, in December 2020, the DOD Office of Inspector General found that contracting officers

⁸Depending on an agency's guidance, there may be an option to request reimbursement for section 3610 paid leave directly against a contract, but there may also be opportunities for reimbursement across multiple contracts as part of a global settlement process. For instance, we previously reported that DOD's guidance tailored 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. [GAO-20-662](#).

⁹[GAO-20-662](#).

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

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

had to rely on contractors to self-certify that the section 3610 costs they claimed were the only reimbursements the contractors received for paid leave, and that the contractors were not receiving reimbursements for the same expenses from any other sources.¹² In January 2021, the Office of Inspector General of the National Reconnaissance Office also completed an evaluation of that agency's implementation of section 3610.¹³ According to officials, the Offices of Inspector General of NASA and DOE are also undertaking work related to section 3610.

Agencies Varied in Their Use of Section 3610 Authority and Prioritized Implementation Speed over a More Deliberative Process

The four agencies we reviewed made use of section 3610 authority to varying degrees, identifying a total of at least \$882.8 million in paid leave costs incurred by their contractors over 14 months, which the agencies either had reimbursed or were assessing for potential reimbursement. The agencies tracked this use via different methods. Further, the agencies based their decisions to use this authority on the type of work performed by contractors and assessments of their own funding priorities. Agencies' implementation of section 3610 was also shaped by the extent to which they had existing processes for addressing costs claimed by contractors. In implementing this authority, and given the urgent need to respond quickly to the pandemic, agencies prioritized speed over a more deliberative process.

Extent to Which Selected Agencies Used Section 3610 Authority Varied

The four agencies we reviewed—DOD, DOE, DHS, and NASA—identified at least \$882.8 million in section 3610 paid leave costs incurred by their contractors from January 31, 2020, through March 31, 2021, which the agencies either had reimbursed or were assessing for potential reimbursement. The amount of use varied greatly by agency (see table 1).

¹²Department of Defense, Office of Inspector General, *Audit of Department of Defense Implementation of Section 3610 of the Coronavirus Aid, Relief, and Economic Security Act*, DODIG-2021-030 (Alexandria, VA: Dec. 9, 2020).

¹³National Reconnaissance Office, Office of Inspector General, *Evaluation of the National Reconnaissance Office's Implementation of Section 3610 Authorized by the Coronavirus Aid, Relief, and Economic Security Act*, Project Number 2020-004 S (Chantilly, VA: Jan. 4, 2021).

Table 1: Use of Section 3610 Authority as Reported by Selected Agencies from January 31, 2020 through March 31, 2021

Agency	Use of section 3610 authority (millions of dollars)
Department of Energy ^a	760.7
Department of Defense	73.2
National Aeronautics and Space Administration (NASA) ^b	At least 47.5
Department of Homeland Security	1.4

Source: GAO analysis of Federal Procurement Data System and agency-reported data. | GAO-21-475

^aThe amount reported by the Department of Energy represents potential section 3610 costs incurred by contractors (e.g., invoiced amounts), unlike amounts reported by the Departments of Defense and Homeland Security which were based on obligations reported to the Federal Procurement Data System.

^bAs of March 31, 2021, NASA reported \$80 million in potential section 3610 reimbursements in its internal invoice payment tracking system since March 2020. However, a NASA official stated that this amount includes both section 3610 and non-section 3610 costs related to COVID-19, and based on initial assessments the amount for section 3610 costs is at least \$47.5 million. A NASA official noted that contracting officers will manually separate these costs when closing contractors' requests for equitable adjustment in response to the pandemic and, at that point, will have more visibility into the agency's use of section 3610 to reimburse contractors' paid leave costs.

Agencies Used Different Ways to Track Use of Section 3610

The agencies in our review tracked the use of section 3610 in a variety of ways—including in FPDS per OMB guidance and via tracking mechanisms established by the agencies themselves—and captured different types of data. OMB's April 2020 guidance noted that, to track the use of section 3610, agencies should report contract modifications allowing payments authorized by section 3610 to FPDS by entering "COVID-19 3610" at the beginning of the Description of Requirements field. We found some differences between the amounts publicly reported in FPDS and internally tracked by agencies.¹⁴ Specifically:

- At the headquarters level, DHS tracked its use of section 3610 through obligations reported by contracting officers in FPDS. DHS officials noted that these records sometimes included non-section 3610 obligations, and that they periodically reviewed and corrected such instances.
- In the case of DOE, the agency's internal data showed \$760.7 million in potential section 3610 costs incurred by contractors as of March 31,

¹⁴Agencies in our review did not centrally track use of other authorities to reimburse contractors for paid leave costs, such as FAR-based contract clauses, although officials noted that it was possible that contracting officers were using such authorities.

2021, in comparison to the \$357.9 million in section 3610 obligations reported in FPDS as of the same date. DOE officials said that the agency was able to use existing contract obligations to cover section 3610 costs incurred by contractors; as such, officials said DOE did not require issuing new contract modifications to add funding. Such modifications would have needed to be reported in FPDS pursuant to OMB's guidance. For tracking purposes, DOE officials told us the agency incorporated special coding into its invoicing and payment systems for expenditures related to COVID-19 since FPDS is not designed to collect this type of spend information. DOE officials also noted that the amounts tracked by the agency as costs incurred by contractors do not necessarily equate to actual or final reimbursements made to contractors, as reimbursements are provisional under cost-reimbursement contracts and will be finalized by DOE after they have been audited.

- In the case of DOD, the amount originally reported in FPDS exceeded the amount the agency internally tracked. DOD reported in FPDS that it had obligated \$91.3 million in section 3610-related obligations as of March 31, 2021, whereas DOD officials stated that, upon reviewing the reported information, the actual amount was \$73.2 million. As we reported in September 2020, these reviews identified instances in which obligations reported in FPDS 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. Officials from DOD's Defense Pricing and Contracting office told us they continue to review FPDS records for obligations using section 3610 authority to check that they are accurately coded and meet DOD's section 3610 policy requirements.
- At NASA, the agency reported \$11.1 million in FPDS as section 3610 obligations as of March 31, 2021, but NASA officials said that they do not use FPDS for the purpose of tracking use of section 3610 authority. Rather, NASA uses an invoice payment tracking system to monitor its use of the authority, which, as of March 31, 2021, showed \$80 million in potential section 3610 reimbursements since March 2020. However, a NASA official told us that this amount includes both section 3610 and non-section 3610 costs related to COVID-19; based on initial assessments, the amount for section 3610 costs is at least \$47.5 million. A NASA official said that contracting officers will manually separate these costs when closing contractors' requests for equitable adjustment in response to the pandemic and, at that point, will have more visibility into NASA's use of section 3610.

Agencies' Decisions to Use Section 3610 Authority Were Based Largely on Type of Work and Funding Priorities

Agency officials told us their decisions to use section 3610 authority to reimburse contractor paid leave depended, in part, on the type of work contractors performed—specifically, the extent to which (1) contractor employees could not be onsite due to facility closures and (2) teleworking was not feasible. Such circumstances included when contractor employees needed to work with classified information or were helping test or produce an item, such as an aircraft or ship, but could not access a facility due to restrictions associated with COVID-19. In such cases, reimbursements for paid leave would keep employees—who might have security clearances or key technical knowledge and skills required to support the agency's mission—in a ready state able to return to work quickly and reduce the chance of these employees leaving the contractor.

A related factor that may have affected facility accessibility—and thus the potential need to use section 3610—was the identification by DHS in March 2020 of personnel considered essential critical infrastructure workers during the COVID-19 response.¹⁵ This step established the expectation that workers in critical infrastructure sectors—including contractor and subcontractor personnel—would maintain their normal work schedules while following federal, state, and local safety guidelines. The defense industrial base was identified as a critical infrastructure sector, increasing the likelihood that contractors in this sector would continue operations and limit their need to place employees on paid leave.

Agencies in our review also generally based their decisions to use section 3610 authority to reimburse contractors for paid leave on an assessment of funding priorities. For example:

- NASA officials told us that the agency decided to use existing funding for paid leave reimbursements to maintain the space industrial base and retain contractors' technical skill sets because this approach would lessen the effect on the agency's missions. NASA officials

¹⁵DHS's Cybersecurity and Infrastructure Security Agency is responsible for providing strategic guidance to ensure security and resilience of national critical infrastructure. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), as amended by the Cybersecurity and Infrastructure Security Agency Act of 2018, Pub. L. No. 115-278, 132 Stat. 4168 (2018). As a result, this agency developed a list of essential critical infrastructure workers to inform community decision-making and assist in prioritizing efforts. However, the list is advisory and not a federal directive. The defense industrial base is defined as the worldwide industrial complex that enables research, development, design, production, delivery, and maintenance of military weapons systems/software systems, subsystems, and components or parts as well as purchased services to meet U.S. military requirements.

added that doing so allowed the agency to continue to make progress on missions including the Mars Exploration Program. In addition to existing funding, NASA received \$60 million in supplemental appropriations in the CARES Act to prevent, prepare for, and respond to COVID-19. According to NASA officials, \$5.2 million of this amount helped fund contractors' paid leave reimbursements, while the remainder supported additional information technology needs due to increased telework, increased cleaning and personal protective equipment, and other activities. NASA officials told us that they may request additional supplemental appropriations from Congress to support costs that could include, but would not be limited to, funding paid leave reimbursements.

- DOE officials stated that the agency used existing funding to reimburse contractors for paid leave costs because it was in the government's best interest to retain specialized staff, such as contractor employees who work in the agency's National Laboratories or those who are under contract to help remediate nuclear waste sites.¹⁶
- Although DOD has used existing funding to reimburse \$73.2 million in paid leave costs, this is a small portion of the total amount it estimates it needed to reimburse contractors' paid leave costs. In December 2020, DOD notified Congress that it estimated contractors across the defense industrial base had incurred \$4.25 billion in paid leave costs potentially eligible for reimbursement under section 3610. This amount—equivalent to 1.5 percent of DOD's total contract obligations across the same period—was based on rough order of magnitude estimates through December 11, 2020, which were provided by DOD's largest contractors and extrapolated across its industrial base.

DOD officials told us that, with the extension of section 3610 authority through September 30, 2021, DOD contractors will likely incur additional costs for providing paid leave to their employees. According to DOD officials, DOD's current estimate for section 3610 paid leave costs across the defense industrial base from March 27, 2020, to September 30, 2021, is \$7 billion. DOD officials noted that section 3610 authorized, but did not appropriate, funds for reimbursements. They added that while DOD might be able to use other appropriated

¹⁶DOE officials noted that DOE and the National Nuclear Security Administration—a semi-autonomous agency within DOE—continue to see a downward trend of costs requested for reimbursement that are allowed under section 3610, and that they would seek an extension of the authority beyond September 30, 2021, should conditions warrant.

funds to reimburse contractors, it would not be able to do so without jeopardizing modernization or readiness efforts.¹⁷ Representatives of several large contractors told us that they would not go through the effort of putting together all the information DOD requires in support of reimbursement requests until they had a clearer indication that DOD had funding it was prepared to use for this purpose.¹⁸ In addition, two of the contractors in our review stated in recent financial report filings that they may not be able to fully recover paid leave costs under fixed-price-type contracts. DOD officials noted the possibility that, to the extent that paid leave costs—particularly on fixed-price-type contracts—are not reimbursed, contractors might increase indirect cost rates on future contracts.¹⁹

- DHS officials cited the agency’s ability to find ways to keep facilities open, as well as keep contractors working, as reasons for its relatively low level of paid leave reimbursement. For example, while increased telework reduced the need for frequent building cleaning, DHS modified contracts so that cleaning contractors performed more thorough cleaning. DHS officials said this enabled the contractors to keep working, helped meet DHS’s requirement to have facilities available when needed, and readied facilities for eventual full reopening. As of March 2021, DHS officials said that they do not plan to seek supplemental appropriations for paid leave costs.

¹⁷DOD also notified Congress that it estimates needing an additional \$6.55 billion to reimburse contractors for other COVID-19-related costs, including the purchase of personal protective equipment, increased cleaning, and the costs of reconfiguring facilities and offices to support social distancing. DOD officials stated that the agency has sought a total of \$13.6 billion in supplemental appropriations from Congress to fund all COVID-19-related costs through fiscal year 2023. This amount takes into account cost reductions due to COVID-19 such as decreased travel costs.

¹⁸A statement from a senior DOD official indicated that global settlements at the business unit or corporate level—as provided for in guidance issued by DOD in August 2020—rather than on a contract-by-contract basis, may be the preferred approach for reimbursing its largest contractors should funding be available.

¹⁹Defense Contract Audit Agency officials noted they anticipated seeing COVID-19 effects, including paid leave, reflected in contractors’ incurred cost submissions due the summer of 2021, as well as in forward pricing rate proposals. Contractor forward pricing rate proposals are part of the negotiation of forward pricing rate agreements with contracting officers which establish rates used as bases for contract pricing during the period covered by the agreement. FAR §15.407-3; FAR subpart 42.17.

Existing Processes Informed How Agencies Implemented Section 3610

The extent to which agencies had existing processes for addressing costs claimed by contractors also informed how they approached implementation of section 3610.

- In NASA's case, prior to the COVID-19 pandemic, the agency identified in existing contractual clauses contractor responsibilities and contracting officer authorities in the event that work could not be safely performed at contractor facilities, or if a NASA facility was closed and there was no work the contractor could accomplish from a remote location.²⁰ Circumstances that might temporarily close a NASA facility include natural disasters such as hurricanes. For example, NASA includes a standard FAR clause governing stop-work orders, which states that the contracting officer shall make an equitable adjustment to a contract's price or delivery schedule, or both, should certain conditions be met. Additionally, a unique NASA clause states that the contracting officer may consider making an equitable adjustment or other remedy to compensate for the period that NASA facilities were not accessible to contractor employees. NASA's guidance for section 3610 notes that the CARES Act complements the agency's existing authorities. To achieve a standard agency-wide approach to implement these clauses, NASA established advance agreements—incorporated into contracts through bilateral modifications—that identified how to treat costs associated with employees unable to work remotely.²¹ For example, the advance agreements provide instructions for billing and labeling the invoice to reflect COVID-19 terminology and require separation on the invoice of labor and non-labor expenses. NASA officials said that the advance agreements fostered communication between contracting officers and contractors and established a clear process for requesting and receiving paid leave reimbursements under section 3610.
- DOD implemented section 3610, in part, by issuing a class deviation to the FAR and Defense Federal Acquisition Regulation Supplement

²⁰FAR § 52.242-15 (Stop-Work Order) and NASA FAR Supplement § 1852.242-72 (Denied Access to NASA Facilities).

²¹FAR § 43.103(a) (Types of contract modifications). A bilateral modification is a contract modification that is signed by the contractor and the contracting officer, and its uses include making negotiated equitable adjustments resulting from the issuance of a change order. A unilateral modification, on the other hand, is a contract modification that is signed only by the contracting officer.

that established a new cost principle.²² This class deviation established the allowability of section 3610 costs.²³ Paid leave reimbursement remains at the discretion of the contracting officer, who is expected to consider the immediacy of the contractor's need for financial relief. For example, some contractors may still have incoming revenue and be able to conduct work remotely, whereas others may be unable to conduct any business and have difficulties making payroll and retaining employees.

- According to DHS guidance for implementing section 3610, DHS's contracting officers can negotiate bilateral contract modifications to support contractors' needs in order to maintain a ready state. More specifically, according to the guidance, DHS's modifications require the contractor to agree to segregate and report the actual costs of the leave payments for each employee. DHS officials said that they developed this process because contracting officers are familiar with using bilateral modifications, allowing them to quickly implement section 3610.
- According to DOE officials, paid leave costs are allowable if they meet applicable FAR requirements; therefore, no special authorities were needed to recognize paid leave costs as reimbursable under contracts. DOE officials said that the agency generally used existing processes to review and approve paid leave reimbursement requests. For example, according to DOE officials, under the department's existing processes, requests for paid leave reimbursements are provisional under cost-reimbursement contracts and will be finalized by DOE after they have been audited. The officials stated that program officials and contracting officers have significant discretion in deciding how to implement paid leave reimbursements, including through means such as contract modifications and advance agreements. For example, DOE officials noted that one program established advance agreements to address which costs the government would consider reasonable for reimbursement. However, DOE did not require the use of advance agreements because such a

²²DOD Class Deviation 2020-O0013, Rev. 4 (March 23, 2021). See also DOD Class Deviation 2020-O0021, Rev. 3 (March 23, 2021). 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. FAR §§ 1.402, 1.404. Class deviations are also issued in relation to agency acquisition regulations; for example, they allow DOD organizations to deviate from the Defense Federal Acquisition Regulation Supplement. Defense Federal Acquisition Regulation Supplement subpart 201.4.

²³The class deviation stated that the costs could be charged directly to affected contracts, although DOD also issued guidance noting that in some situations it may be more appropriate to charge these costs indirectly across multiple contracts.

step might not be necessary in some cases when implementing section 3610, according to officials. Further, DOE officials expressed cost accounting standards-related concerns about contractors charging COVID-19 paid leave to affected contracts as a direct cost instead of an indirect cost. DOE officials also observed that large-scale changes to agreed-upon cost accounting practices can take considerable time to coordinate with contracting officers and can have significant effects on costs across different contract types at multiple federal agencies.

Agencies Prioritized Quick Implementation; Opportunities Exist to Collect and Share Lessons Learned

Given the urgency associated with responding to the pandemic and mitigating its effect on contractors' ability to support their government customers, agency officials told us they prioritized implementation speed over a more deliberative process. Overall, each of the agencies in our review—as well as OMB—issued initial guidance outlining how they planned to implement section 3610 and the extent to which they would use or adapt existing mechanisms. While some coordination across and within agencies occurred following enactment of section 3610, our September 2020 report found a number of inconsistencies between different agencies' initial guidance documents, such as the start date for reimbursement of section 3610 paid leave costs.

Furthermore, several of the contractors in our review work with multiple agencies, and they observed variations in how agencies implemented section 3610. For example, several contractor representatives noted that NASA's process to reimburse contractors affected by COVID-19 was a clearer pathway to reimbursement than DOD's approach. Finally, as noted above, the ways that agencies tracked use of section 3610 relied on different data sources and required manual adjustments for accuracy, adding to the challenges of obtaining information on use of section 3610.

In prior work, we found that the collecting and sharing of lessons learned from previous programs or projects provides organizations with a powerful method for sharing ideas for improving work processes.²⁴ In

²⁴GAO, *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); *DOD Utilities Privatization: Improved Data Collection and Lessons Learned Archive Could Help Reduce Time to Award Contracts*, [GAO-20-104](#) (Washington, D.C.: Apr. 2, 2020); *Project Management: DOE and NNSA Should Improve Their Lessons-Learned Process for Capital Asset Projects*, [GAO-19-25](#) (Washington, D.C.: Dec. 21, 2018); and *Federal Real Property Security: Interagency Security Committee Should Implement a Lessons-Learned Process*, [GAO-12-901](#) (Washington, D.C.: Sept. 10, 2012).

particular, we found that collecting and sharing lessons learned from an interagency effort is valuable since one agency can share its experiences with other agencies that may benefit from the information.²⁵ Furthermore, organizations that identify and apply lessons learned can ensure they factor beneficial information into planning for future efforts and limit the recurrence of challenges that can be anticipated in advance. We have previously reported on actions Congress and OMB have taken to strengthen agencies' use of evidence about whether federal programs and activities achieve intended results in planning future efforts. For example, the Foundations for Evidence-Based Policymaking Act of 2018 requires major federal agencies to develop learning agendas.²⁶

Officials from all four agencies in our review said that they either have captured or intend to capture lessons learned from the implementation of section 3610 and would be willing to share these with other federal agencies. However, OMB—which coordinates government-wide contracting policy among other responsibilities—has not collected and shared agencies' lessons learned. With coordination from OFPP within OMB, such information could help OMB and agencies to enhance the implementation of any new paid leave reimbursement provisions that may be enacted as part of rapid federal responses to future emergencies.

Contractors Cited Workforce Retention as the Main Benefit of Paid Leave Reimbursement

The primary benefit of section 3610 paid leave reimbursement cited by contractors in our review was its effect on workforce retention, in particular for workers with specialized skills or clearances. Contractor representatives noted that they took other steps to mitigate the effect of COVID-19 prior to seeking paid leave reimbursement, leading to fewer individuals being placed on paid leave.

Contractors Cited Workforce Retention as Primary Benefit of Section 3610

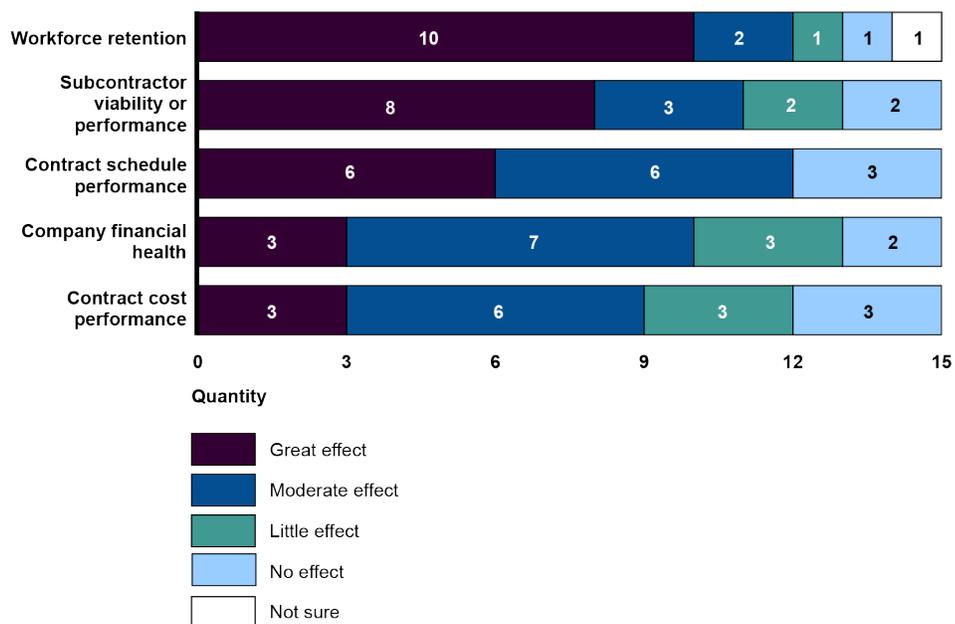
Contractor representatives noted that the availability of paid leave reimbursement under section 3610 reinforced workforce retention by boosting employee morale, allowing employees to maintain health benefits and paychecks during a time of uncertainty, and increasing safety by encouraging possibly sick employees to stay at home. Contractor representatives stated they were generally supportive of section 3610 to reimburse paid leave costs, noting that its use allowed

²⁵GAO-12-901.

²⁶For more information on developing learning agendas, see GAO, *Evidence-Based Policymaking: Selected Agencies Coordinate Activities, but Could Enhance Collaboration*, GAO-20-119 (Washington, D.C.: Dec. 4, 2019).

them to avoid some furloughs or layoffs, retain key skill sets in high demand, and keep employees in a ready state able to quickly remobilize to support the government (see fig. 1).

Figure 1: Effects of Section 3610 Paid Leave Reimbursement Cited by Contractors GAO Reviewed



Source: GAO analysis of contractor representative interview responses. | GAO-21-475

Contractors we spoke with cited the ability to retain employees with specialized skills or clearances in their decisions to seek paid leave reimbursement on particular contracts. For example, representatives of one contractor stated that receiving section 3610 reimbursement eased the fear of permanently losing employees with years of training and experience, and representatives of another contractor noted the ability to keep employees with security clearances due to paid leave reimbursement.²⁷

²⁷We have previously noted extensive challenges with the timely processing of personnel security clearances across the federal government and, in 2018, GAO added the government-wide personnel security clearance process to the High-Risk List due to its various challenges. See GAO, *High-Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas*, [GAO-21-119SP](#) (Washington, D.C.: Mar. 2, 2021).

In addition to employee retention, contractors noted other benefits associated with receiving section 3610 reimbursements:

- Contractors noted the effect of section 3610 reimbursement on the ability of subcontractors—sometimes also small businesses—to remain viable and able to perform. As representatives of one contractor noted, small businesses do not always have access to the same financial resources as larger businesses, so a missed payment could have a significant effect on their viability. However, by being able to submit invoices and receive payment under normal timelines, these subcontractors could retain their personnel and remain financially healthy.
- Representatives for some DOD contractors noted a contract cost accounting benefit of section 3610. Paid leave is usually a fringe benefit allocated as an indirect cost across multiple contracts. However, DOD’s section 3610 guidance allows for COVID-19 paid leave costs to be charged directly to affected contracts.²⁸ For example, one contractor’s representative noted that if the contractor had to treat these as indirect costs, it would have had a potentially significant effect on rate structures and increased future contract prices.

Contractors Used Other Approaches to Mitigate the Effect of COVID-19 and the Need to Place Employees on Paid Leave

Our review of contractor financial statements and discussions with contractor representatives indicated that contractors took a variety of steps to keep employees and subcontractors working to the extent possible and, from their perspectives, minimized the need to seek reimbursement for paid leave costs. For example, in addition to following Centers for Disease Control and Prevention guidelines on social distancing, contractors reported purchasing personal protective equipment, increasing cleaning at facilities, and buying additional equipment to support teleworking. Contractors also reported that they adjusted their internal policies, such as increasing telework availability, allowing flexible employee schedules, implementing shift work, and enhancing leave share programs. To keep employees working, 11 out of

²⁸DOD recommended that contractors charge section 3610 costs to a newly created cost category, “Other Direct Costs COVID-19”, while recognizing that in some situations, it may be more appropriate to charge these costs through indirect cost pools. DOD noted that, by creating a new category of costs, contractors may avoid any potential issues with disclosed accounting policies and procedures, cost accounting standards, or their cost accounting standards disclosure statements.

the 15 contractors in our review reported moving employees to different contracts or projects.

Some large prime contractors in our review also took steps to lessen the effect of COVID-19 disruptions on their supply chain. In their financial statements, they reported using increased progress payment rates from the government to accelerate payments to subcontractors so the industrial base could maintain its financial health and liquidity. Further, some of these contractors' representatives told us that accelerating payments to critical suppliers and subcontractors was helpful in minimizing the effect of COVID-19.

Contractor representatives told us that after taking steps to keep employees working, there was still a need to provide paid leave to some employees.²⁹ However, the proportion of employees and contracts for which each contractor requested paid leave reimbursement was usually low compared to the contractor's overall workforce and contracting base. For example, as of February 2021, 14 of the 15 contractors in our review reported seeking reimbursement on a subset, rather than all, of their federal contracts. Representatives of one contractor told us that they sought section 3610 reimbursement on only 1 percent of their contracts. Representatives of another contractor stated that as of January 2021, they had three employees for whom they were currently requesting reimbursement under section 3610, representing less than 1 percent of their workforce.

Conclusions

In the face of the pandemic, provisions to keep the government and its contractor support in a ready state—such as section 3610—could help accelerate recovery. Agencies understandably prioritized quick implementation of section 3610 over a more deliberative process given the urgency of responding to the pandemic. For a number of reasons, agencies' use and implementation of section 3610 authority, and contractors' experiences, varied. Once the COVID-19 pandemic is over, there will be an opportunity for the federal government—with the coordination of OMB's OFPP—to collect and share lessons learned from agencies' implementation of section 3610. Doing so could enhance how agencies implement paid leave reimbursement provisions should they be enacted in response to future emergencies.

²⁹Some contractors we spoke with told us they also incurred paid leave costs or used section 3610 in their work with the Intelligence Community.

Recommendation for Executive Action

The Director of OMB should, upon conclusion of the COVID-19 national emergency, ensure that OFPP collects and shares lessons learned from federal agencies' implementation of COVID-19 paid leave reimbursement, including those related to data tracking and reporting. (Recommendation 1)

Agency Comments

We provided a draft of this report to DHS, DOD, DOE, NASA and OMB for review and comment. DHS and NASA had no comments on the draft report. DOD and DOE provided technical comments, which we incorporated as appropriate. OMB concurred with the recommendation. In an email response, OMB noted that OFPP seeks to promote interagency collaboration and sharing of information and lessons learned. OMB further noted that after the enactment of section 3610, OFPP convened senior procurement executives and FAR Council members on several occasions to discuss OFPP's guiding principles and to provide a forum for agencies to explain their approaches and share perspectives on implementation. In addition, OFPP posted agencies' public guidance documents on a government-wide coronavirus acquisition-related website and posted internal information in an OMB system used to facilitate collaboration. OFPP agreed to collect and share individual agencies' lessons learned more broadly with the community to promote knowledge management.

We are sending copies of this report to the appropriate congressional addressees; the Secretaries of Defense, Energy, and Homeland Security; the Administrator of NASA; and the Acting 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 II.



Timothy J. DiNapoli
Director, Contracting and National Security Acquisitions

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

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Finance
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The Honorable Donald S. Beyer, Jr.
Chairman
Subcommittee on Space and Aeronautics
Committee on Science, Space, and Technology
House of Representatives

Appendix I: Objectives, Scope, and Methodology

This report (1) examines how selected federal agencies have used section 3610 authority and (2) presents selected contractors' perspectives on Coronavirus Disease 2019 (COVID-19) paid leave reimbursement.

To examine how selected federal agencies have used section 3610 authority, we identified the seven federal agencies with contract obligations greater than \$10 billion in fiscal year 2019—the most recent full year for which data were available at the time of our analysis. We reviewed these agencies' use of section 3610 authority as of July 20, 2020, as reported to the Federal Procurement Data System (FPDS), and selected the three agencies with reported use. These three agencies were the Department of Defense (DOD), Department of Energy (DOE), and the National Aeronautics and Space Administration (NASA). As a point of comparison, we also selected one agency—the Department of Homeland Security (DHS)—that had not reported use of section 3610 authority as of July 20, 2020.¹ For these four agencies, we gathered and analyzed guidance regarding section 3610 and data on its use either collected by agencies or reported to FPDS from January 31, 2020, through March 31, 2021; and interviewed or received written responses from cognizant agency officials.² We also interviewed officials from the Office of Management and Budget's (OMB) Office of Federal Procurement Policy (OFPP) regarding the extent of this agency's plans to collect and share lessons learned from federal agencies' implementation of section 3610, due to this agency's role in coordinating government-wide contracting policy. To assess the reliability of data from agencies and FPDS, we reviewed related documentation such as data validation rules and interviewed knowledgeable agency officials. We determined the data were sufficiently reliable for the purposes of describing the extent to which selected agencies reported use of section 3610 authority.

¹In addition, the scope of this engagement does not include use of section 3610 within the Intelligence Community. We coordinated with the Office of Inspector General of the National Reconnaissance Office, which completed an evaluation of that agency's implementation of section 3610 in January 2021. National Reconnaissance Office, Office of Inspector General, *Evaluation of the National Reconnaissance Office's Implementation of Section 3610 Authorized by the Coronavirus Aid, Relief, and Economic Security Act*, Project Number 2020-004 S (Chantilly, VA: Jan. 4, 2021).

²According to the General Services Administration, FPDS is the federal government's authoritative source for contract data. Contracts whose estimated value is \$10,000 or more are reported to FPDS, as well as every modification to those contracts, regardless of dollar value. On October 17, 2020, the FPDS reports module was retired and the <https://SAM.gov> Data Bank is now the only place to create and run both standard and ad hoc reports on federal contract data.

To identify selected contractors' perspectives on COVID-19 paid leave reimbursement, we selected a non-generalizable sample of 15 prime contractors that, according to agency data, have received or requested section 3610 reimbursements from one or more agencies in this review. These contractors reflected a range of company sizes, ownership structures, and product and service offerings. We selected the following 15 contractors:

- Afognak Native Corporation
- ASRC Federal Holding Company
- The Boeing Company
- Booz Allen Hamilton Holding Corporation
- Constellis
- Fluor Corporation
- General Dynamics Corporation
- Jacobs Engineering Group Inc.
- Leidos Holdings, Inc.
- Lockheed Martin Corporation
- Melwood Horticultural Training Center, Inc.
- Northrop Grumman Corporation
- Raytheon Technologies Corporation
- S&K Technologies, Inc.
- Science and Technology Corporation

We conducted semi-structured interviews of cognizant contractor representatives about their experiences seeking reimbursement from different agencies and reviewed available company financial information. We also interviewed representatives from the following industry associations about contractors' experiences seeking reimbursement from different agencies, and about why some contractors have not requested reimbursements:

- Aerospace Industries Association
- Coalition for Government Procurement
- National Defense Industrial Association

- Professional Services Council
- Shipbuilders Council of America

Additionally, we selected four contractors that we identified as having not yet requested section 3610 reimbursements from agencies in our review at the time of selection. For each of the four agencies in our review, we identified the three contractors with the most contract obligations in fiscal year 2020, as reported to FPDS, that did not appear in agencies' lists of contractors that had received or requested section 3610 reimbursements, and that FPDS showed as having not received contract obligations indicating use of section 3610 authority. We then selected one of the three contractors from each agency to reflect a range of company sizes, ownership structures, and product and service offerings. Based on this analysis, we interviewed or received written responses from cognizant representatives from the following four contractors:

- Association of Universities for Research in Astronomy
- Huntington Ingalls Industries, Inc.
- The GEO Group, Inc.
- Project Enhancement Corporation

We conducted this performance audit from October 2020 to July 2021 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.

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

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

Staff Acknowledgments

In addition to the contact named above, Tatiana Winger (Assistant Director), Sarah Amer, Hilary Benedict, Robert Bullock (Analyst-in-Charge), Laura Greifner, Julia Kennon, Natalie Logan, Miranda Riemer, Zamir Ruli, Rachel Stoiko, Roxanna Sun, and Carmen Yeung made key contributions to this report.

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