United States Government Accountability Office

Report to Congressional Requesters

September 2021

FEDERAL RULEMAKING

Selected Agencies Should Fully Describe Public Comment Data and Their Limitations

Accessible Version

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GAO-21-103181

GAO Highlights

Highlights of GAO-21-103181, a report to congressional requesters

September 2021

FEDERAL RULEMAKING

Selected Agencies Should Fully Describe Public Comment Data and Their Limitations

Why GAO Did This Study

Federal agencies publish thousands of proposed rules each year and are generally required to provide interested persons (commenters) an opportunity to comment on them. Although the identity information collected varies, agencies are generally required to make public comments available online, to the extent practical. Some rulemakings have received extremely large numbers of comments in recent years, raising questions about the accuracy of the associated identity information.

GAO was asked to review issues related to identity information associated with public comments. Among other things, this report examines the extent to which commenters confirmed that they submitted comments on rulemaking proceedings for selected agencies and the challenges that exist for external users in reviewing and analyzing public comment data.

GAO selected 10 agencies and obtained electronic comments on their rulemakings that accepted comments from 2013 through 2017. GAO selected generalizable samples of comments with email addresses and surveyed commenters to determine whether they submitted the comments. GAO reviewed comment data and key practices for reporting government data.

What GAO Recommends

GAO is making a total of 10 recommendations to selected agencies and GSA to fully describe comment data available to the public, including any limitations. The agencies generally agreed with the recommendations and discussed plans to implement them.

View GAO-21-103181. For more information, contact Seto Bagdoyan at (202) 512-6722 or bagdoyans@gao.gov.

What GAO Found

Regulations.gov and selected agency-specific comment websites collect some identity information, such as email address, from commenters who choose to provide it during the public comment process. Based on GAO's survey, the extent to which commenters with email addresses confirmed that they submitted their comments to rulemakings varied across 10 selected agencies (see figure). Specifically, estimates of commenters with email addresses that confirmed their comments ranged from 48 to 87 percent. Conversely, estimates of presumed commenters with email addresses that did not make the comments ranged from 5 to 30 percent, calling into question the actual source of these comments. Most comments at eight selected agencies did not contain email addresses. Although agencies may collect identity information, the law does not require its collection or verification. Agencies must consider the substance of the comment, rather than the identity of the commenter, as part of the rulemaking process.

Extent of Commenters with Email Addresses that Confirmed They Submitted Their Comments on 10 Selected Agencies' Rulemaking Proceedings

Source: GAO analysis. | GAO-21-103181

Data table for Extent of Commenters with Email Addresses that Confirmed They Submitted Their Comments on 10 Selected Agencies' Rulemaking Proceedings

Survey responses by commenters

Yes (confirmed their comments, by agency)	No (Did not submit their comments, by agency)	Not sure (Unsure whether they submitted their comments, by agency)
87%	7%	6%
48%	30%	22%
81%	7%	12%
58%	20%	22%
74%	12%	13%
63%	24%	13%
85%	8%	7%
85%	5%	11%
86%	6%	8%
71%	6%	23%

Note: Estimates in this figure have a margin of error of +/- 9 percentage points or fewer, at the 95 percent confidence level. Circles representing each agency's estimates may overlap if the estimates are similar. For example, the circle at the 85 percent level for Yes responses covers two agencies.

Source: GAO analysis. | GAO-21-103181

Various aspects of the commenting process can create limitations for certain external users of public comment data. For example, identity information associated with public comments is self-reported and may not always be accurate. Additionally, some agencies do not post all instances of duplicate comments (identical or near-identical comment text but varied identity information), so the public may not have access to all comment data related to a proposed rule. Almost all of the selected agencies share at least some public comment data online, but they do not always fully describe the available data. Specifically, the Federal Communications Commission (FCC) does not define the data elements that may be present in its comment data. Further, FCC, the General Services Administration (GSA) (which manages Regulations.gov), and the eight selected agencies that use that site do not describe limitations to external users of comment data that may affect their use of the data. Key practices for transparently reporting open government data state that agencies should fully describe the information they share, including any limitations. Providing information about available public comment data and their limitations can help external users make informed decisions about their use of the data and help ensure they do not inadvertently draw inaccurate conclusions from the data.

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Abbreviations

APA	Administrative Procedure Act
API	application programming interface
BLM	Bureau of Land Management
CAPTCHA	Completely Automated Public Turing Test to Tell Computers and Humans Apart
CFPB	Consumer Financial Protection Bureau
CMS	Centers for Medicare & Medicaid Services
EBSA	Employee Benefits Security Administration
ECFS	Electronic Comment Filing System
EPA	Environmental Protection Agency
FCC	Federal Communications Commission
FDA	Food and Drug Administration
FWS	Fish and Wildlife Service
GSA	General Services Administration
NPRM	Notices of Proposed Rulemaking
PDF	portable document format
SEC	Securities and Exchange Commission
WHD	Wage and Hour Division

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Washington, DC 20548

September 21, 2021

Congressional Requesters

Regulations are how federal agencies establish legally binding requirements and are rooted in agencies' statutory authority. Typically, regulations require regulated parties to take specified actions or prohibit them from taking certain actions. Agencies use regulations to carry out statutory directives to achieve public policy goals such as protecting the health and safety of the public and the environment and facilitating the effective functioning of financial markets.

The Administrative Procedure Act (APA) governs the process by which many federal agencies develop and issue regulations.[1] The APA establishes procedures and broadly applicable federal requirements for informal rulemaking, also known as notice-and-comment rulemaking.[2] Among other things, the APA generally requires agencies to publish Notices of Proposed Rulemaking (NPRM) in the Federal Register and provide interested persons (commenters) an opportunity to comment on proposed rules.[3] Federal agencies publish thousands of NPRMs each year as part of informal rulemaking pursuant to the APA. Agencies must give consideration to any significant comments submitted during the comment period when drafting the final rule.

Further, the E-Government Act of 2002 and Executive Order 13563 set forth additional requirements to foster accessibility during the rulemaking

[1]5 U.S.C. §§ 551-59, 701-06, 1305, 3105, 3344, 5372, 7521. The APA was originally enacted into law in 1946, Pub. L. No. 79-404, 60 Stat. 237 (1946). In addition to the requirements under the APA, an agency may also need to comply with requirements related to rulemaking imposed by other statutes.

[2]The APA describes two types of rulemaking, formal and informal. Formal rulemaking includes a trial-type "on-the-record" proceeding, when rules are required by statute to be made on the record after opportunity for an agency hearing. In such cases, requirements under 5 U.S.C. §§ 556–557 apply. Most federal agencies use the informal rulemaking procedures outlined in 5 U.S.C. § 553, which include notice-and-comment rulemaking. The rulemaking process described in this report is informal rulemaking.

[3]The *Federal Register* is the daily journal of the federal government, and is published every business day by the National Archives and Records Administration. The *Federal Register* contains federal agency regulations, proposed rules and notices of interest to the public, and executive orders, among other things.

process.[4] Specifically, the E-Government Act requires agencies, to the extent practical, to accept comments "by electronic means" and to make available online the public comments and other materials included in the official rulemaking docket, the repository of documents related to a particular rulemaking. To fulfill the requirements of the APA, E-Government Act and Executive Order 13563, agencies may rely on Regulations.gov or their own comment websites to receive public input on proposed rules.[5]

Agencies are not required to collect or verify information associated with the identity of the commenters, such as name, email, or address (identity information) during the course of the notice-and-comment process, under the discretion granted by the APA. Agencies may choose to collect identity information, but there is no legal requirement that they verify this information since it is the substance of the comment, rather than the identity of the commenter, that agencies must consider as part of the rulemaking process. In addition, most agencies make some of the identity information they collect, along with the associated comments, available online. External users, such as members of the public, may be able to download public comment data to review or analyze the comments on a particular NPRM.

In recent years, some high-profile rulemakings received extremely large numbers of comments. For example, during the public comment period for an Environmental Protection Agency (EPA) 2014 rulemaking on greenhouse gas emissions, the agency reported that it received more than 4 million total comments.[6] Similarly, during the public comment period for the Federal Communications Commission's (FCC) 2017 Restoring Internet Freedom rulemaking, FCC received more than 22

[4]Pub. L. No. 107-347, § 206, 116 Stat 2899, 2915–2916 (2002), codified at 44 U.S.C. § 3501 note; Exec. Order No. 13,563, § 2(b), 76 Fed. Reg. 3,821 (Jan. 21, 2011). This executive order does not apply to independent regulatory agencies such as the Federal Communications Commission, the Securities and Exchange Commission, and the Consumer Financial Protection Bureau.

[5]Regulations.gov is an interactive public website providing the general public with the opportunity to access federal regulatory information and submit comments on regulatory and nonregulatory documents published in the Federal Register.

[6]Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (79 Fed. Reg. 34,830 (June 18, 2014) and 80 Fed. Reg. 64,662 (Oct. 23, 2015)).

million comments.[7] This influx of comments called attention to the accuracy of the identity information associated with comments. Subsequently, media and others reported that some of the comments submitted to FCC may have been submitted using false identity information.[8]

You asked us to review issues related to identity information associated with public comments on proposed rulemakings. This report examines (1) the extent to which commenters confirmed that they submitted comments on federal rulemaking proceedings for selected agencies, (2) the extent to which information collected during the comment process allows the source of unconfirmed comments to be determined, and (3) the challenges that exist for external users (such as members of the public) in reviewing and analyzing public comment data.[9]

To address these objectives, we selected 10 agencies (selected agencies) as case studies that received a high volume of public comments during the course of rulemaking proceedings from January 1, 2013, through December 31, 2017.[10] Included in these selected agencies were eight agencies that use Regulations.gov as their agency's comment website ("participating agencies") and two agencies that operate agency-

[7]Restoring Internet Freedom (82 Fed. Reg. 25,568 (June 2, 2017) and (83 Fed. Reg. 7,852 (Feb. 22, 2018)).

[8]Comments using false identity information include any comments submitted with identity information that does not accurately represent the individual submitting the comment in question. This could include anonymized names, such as "John Doe;" fictitious character names, such as "Mickey Mouse;" fabricated names; or improper use of identity information associated with a real person. As an example of the interest in such comments, the Office of the New York State Attorney General operates a specific website that allows members of the public to search FCC's comment website for comments that may have misused identity information and, if any such instances are identified, to file a consumer submission to the Attorney General's office.

[9]Unconfirmed comments are instances where the commenters did not confirm that they submitted comments associated with their email addresses. For our purposes, we focused on two types of unconfirmed comments: comments for which (1) survey respondents indicated that they did not submit the comments and (2) email addresses were nonfunctional. Given the uncertainty related to comments for which (1) commenters were not sure whether they submitted the comments or (2) we did not receive survey responses, we did not attempt to identify the actual source of these comments.

[10]This scope is consistent with our prior report on identity information in the public comment process. See GAO, *Federal Rulemaking: Selected Agencies Should Clearly Communicate Practices Associated with Identity Information in the Public Comment Process*, GAO-19-483 (Washington, D.C.: June 26, 2019).

specific comment websites ("nonparticipating agencies"). Further, six of the selected agencies are component agencies within a larger department, as indicated below. The selected agencies represent a nongeneralizable sample, and findings from this report cannot be generalized to all agencies that receive public comments as part of their rulemaking proceedings. However, as reported by Regulations.gov, the comments submitted to the eight participating agencies we selected represent more than 90 percent of all comments submitted to all participating agencies during the 5-year period.[11] For more information about how we selected agencies for our review, see appendix I. The selected agencies are as follows:

Participating Agencies

- Bureau of Land Management (BLM), Department of the Interior;
- Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services;
- Consumer Financial Protection Bureau (CFPB);
- Employee Benefits Security Administration (EBSA), Department of Labor;
- Environmental Protection Agency;
- Fish and Wildlife Service (FWS), Department of the Interior;
- Food and Drug Administration (FDA), Department of Health and Human Services; and
- Wage and Hour Division (WHD), Department of Labor.

Nonparticipating Agencies

- Federal Communications Commission; and
- Securities and Exchange Commission (SEC).

[11]We made our selection of participating agencies to include agencies that received a high volume of comments based on the total number of comments as reported by Regulations.gov. We determined that the data from Regulations.gov are sufficiently reliable for the purposes of this report, to include providing us with a relative comparison of comment volume between participating agencies for the purposes of case study selection. However, in working with these data, we found that, in some cases, the total numbers as reported by Regulations.gov do not accurately reflect the total number of comments submitted to an agency. Therefore, we are not including these total numbers in this report.

For each of the 10 selected agencies, we obtained electronic comment data for rulemakings that accepted comments from January 1, 2013, through December 31, 2017.[12] Comment data include comment text and associated metadata. Although it varies by agency, metadata may include identity information such as commenter or submitter name, mailing address, email address, and telephone number, as well as time stamps and other administrative information.[13] To assess the reliability of the data, we reviewed relevant documentation, interviewed agency officials, and conducted testing to identify missing data. We determined that the data were sufficiently reliable for the purposes of this report.

Public comments can be submitted in a variety of ways and formats, including attachment files (e.g., Microsoft Word or Adobe portable document format (PDF) files, etc.). These attachment files can contain a single comment or consist of multiple comments. To address these differences and prepare the comment data for analysis, we extracted text from attachment files and developed a model to identify individual comments in the attachment files. For additional detail about the preparation and analysis of the comment data, see appendix I.

To determine the extent of commenters that confirmed they submitted comments to federal rulemaking proceedings at selected agencies, we conducted an email survey. Consequently, our survey results are limited to comments that included email addresses. We emailed a questionnaire to presumed commenters associated with a random sample of 14,427 comments that included email addresses and were received by the 10 selected agencies on rulemakings from January 1, 2013, through December 31, 2017. The questionnaire included an excerpt of the comment text and other information, such as comment date, commenter name, mailing address, and phone number, as available. We asked

[12]FCC uses its commenting system to solicit comments on rulemaking and non-rulemaking dockets. However, FCC officials told us that the comment data do not identify whether specific comments were made to rulemaking or non-rulemaking dockets. As a result, the FCC comment data we obtained and our related analyses include a small amount of non-rulemaking comments (less than 2 percent of all FCC comments). Additionally, because of the high volume of comments and the time needed to complete the request, EPA was unable to provide us with all comments maintained outside of its comment system (i.e., archived comments). To streamline our request, we requested a sample of EPA dockets with archived comments. As a result, our analyses related to EPA reflect only comments maintained in EPA's comment system and the sample of archived comments we obtained.

[13]As we found in June 2019, consistent with the discretion afforded by the APA, agencies collect varied information from commenters. Consequently, the data elements included in agencies' comment data vary. See GAO-19-483.

presumed commenters if they had submitted the comment, to which they could answer Yes, No, or Not sure. We received questionnaire responses for 4,980 comments, an overall response rate of 41 percent. We designed our sample to produce percentage estimates with sampling errors of no more than plus or minus 10 percentage points, at a 95 percent level of confidence. For more information about the survey, see appendix II.

To determine the extent to which information collected during the commenting process allows the source of unconfirmed comments to be determined, we identified the comment data associated with comments for which (1) survey respondents indicated that they did not submit comments associated with their email addresses, or (2) email addresses were not functional.[14] We also obtained additional information that was collected during the comment process but is not part of the comment data. This includes information related to post requests submitted through agencies' application programming interfaces (API) and submission details captured by a file-sharing website FCC used for its 2017 Restoring Internet Freedom rulemaking.[15] We reviewed this available information and conducted internet searches to determine whether such information can help identify the actual source of these comments. We also interviewed officials from the New York State Attorney General's Office and reviewed the office's report on its efforts to identify the source of comments submitted to FCC's 2017 Restoring Internet Freedom rulemaking.[16]

To determine the challenges that exist for external users of public comment data, we reviewed the comment data available to external users and disclosures related to the data on agencies' comment websites. For the purposes of this report, we considered external users to be anyone other than the agency conducting the rulemaking and focused on uses of the data that do not involve evaluating compliance with APA requirements. We compared this information to key practices for

[14]It is important to note that because there is no requirement for agencies to collect or verify identity information related to comments, there is similarly no requirement for agencies to identify the actual source of comments or collect information that does so.

[15]An API sets up machine-to-machine communication and allows users to connect directly to a website to provide or access data. A post request sends data (e.g., a comment) to the API.

[16]New York State Office of the Attorney General, *Fake Comments: How U.S. Companies & Partisans Hack Democracy to Undermine Your Voice* (May 6, 2021).

transparently reporting open government data.[17] We also interviewed agency officials regarding their comment collection and sharing processes.

We conducted this performance audit from February 2018 to September 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

Public Comments in the Rulemaking Process

The public has the opportunity to provide input as agencies develop rules. As mentioned earlier, the APA generally requires agencies to, among other things, publish an NPRM in the Federal Register, allow any interested party an opportunity to comment on the rulemaking process by providing "written data, views, or arguments" (public comments), and issue a final rule accompanied by a statement of its basis and purpose.[18]

The E-Government Act requires agencies, to the extent practical, to accept comments "by electronic means" and to make available online the public comments and other materials included in the official rulemaking docket. Executive Order 13563 further states that regulations should be based, to the extent feasible, on the open exchange of information and perspectives.[19] To promote this open exchange, to the extent feasible and

[17]GAO, *Open Data: Treasury Could Better Align USAspending.gov with Key Practices and Search Requirements*, GAO-19-72 (Washington, D.C.: Dec. 13, 2018).

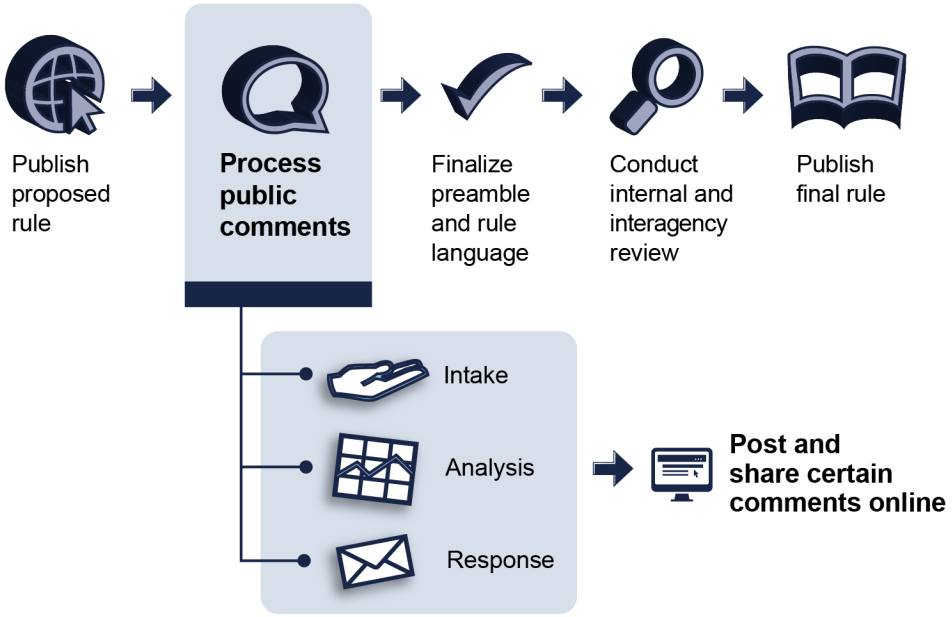
[18]The APA allows agencies to issue final rules without the use of an NPRM under various exceptions, such as those dealing with military or foreign affairs and agency management or personnel. 5 U.S.C. § 553(a). APA requirements to publish a proposed rule generally also do not apply when an agency finds, for "good cause," that those procedures are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b). In such cases, agencies may solicit comments through the *Federal Register* when publishing a final rule without an NPRM, but the public does not have an opportunity to comment before the rule's issuance, nor is the agency obligated to respond to comments it has received.

[19]This executive order does not apply to independent regulatory agencies such as FCC, SEC, and CFPB.

permitted by law, most agencies are required to provide the public with a meaningful opportunity to participate in the regulatory process through the internet, to include timely online access to the rulemaking docket in an open format that can be easily searched and downloaded.

Figure 1 outlines key steps in the rulemaking process related to public comments.

Figure 1: Key Steps in the Rulemaking Process Related to Public Comments



Source: GAO-19-483 and GAO analysis of selected agencies' comment websites. | GAO-21-103181

Text of Figure 1: Key Steps in the Rulemaking Process Related to Public Comments

- Publish proposed rule
- Process public comments
  - Intake
  - Analysis
  - Response

  Post and share certain comments online
- Finalize preamble and rule language
- Conduct internal and interagency review
- Publish final rule

The APA does not require the disclosure of identifying information from an interested party that submits a comment. However, as discussed below, the selected agencies may collect some identity information, such as email addresses, which officials from multiple agencies said they may

use to contact commenters for additional information related to their submission, if necessary. Agencies have no obligation under the APA to verify the identity of such parties during the rulemaking process. Instead, the APA and courts require agencies to consider relevant and substantive comments. Courts have explained that significant comments are comments that raise relevant points and, if true or if adopted, would require a change in the proposed rule.[20] However, courts have held that agencies are not required to respond to every comment individually.[21]

Agencies must explain their general response to the relevant and substantive comments in a concise overall statement of basis and purpose, which in practice forms part of the preamble of the final rule.[22] Agencies routinely offer a single response to multiple identical or similar comments. As explained by Regulations.gov's Commenter Checklist, "the comment process is not a vote," and "agencies make determinations for a proposed action based on sound reasoning and scientific evidence rather than a majority of votes. A single, well-supported comment may carry more weight than a thousand form letters."

The APA includes provisions on the scope of judicial review that establishes the bases under which a court shall find an agency's action unlawful.[23] Among these APA bases are when the court finds that agency action, findings, and conclusions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and "without observance of procedure required by law."[24] How an agency managed and considered public comments may be relevant during judicial review. For example, one basis for a court's reversal of an agency action has

[20]Safari Aviation Inc. v. Garvey, 300 F.3d 1144, 1151 (9th Cir. 2002); Am. Min. Congress v. EPA, 907 F.2d 1179, 1188 (D.C. Cir. 1990).

[21]Am. Min. Congress v. EPA, 907 F.2d 1179, 1187 (D.C. Cir. 1990) (citing Thompson v. Clark, 741 F.2d 401, 408 (D.C. Cir. 1984)). *See also*, Action on Smoking and Health v. C.A.B., 699 F.2d 1209, 1216 (D.C. Cir. 1989).

[22]5 U.S.C. § 553(c). Pursuant to 1 C.F.R. § 18.12(c), an agency may include in the preamble, as applicable: a discussion of the background and major issues involved; any significant differences between the final rule and the proposed rule; a response to substantive public comments received; and any other information the agency considers appropriate.

[23]5 U.S.C. §§ 701–706. The APA provisions govern judicial review unless the enabling statute for a particular regulatory program specifies a different standard.

[24]5 U.S.C. § 706(2)(A), (D).

been that, upon review of the statement of basis and purpose, the court concludes the agency failed to consider or respond to relevant and significant comments.[25] Conversely, courts have upheld agency rules when the courts have found the statement of basis and purposes demonstrate the agency considered the commenter's arguments.[26]

Agencies' Public Comment Websites

In order to carry out the rulemaking responsibilities specified in the E-Government Act and Executive Order 13563, most agencies use Regulations.gov, a website where the public can find rulemaking materials and submit its comments.[27] As of May 2021, Regulations.gov identified 186 participating and 135 nonparticipating agencies.[28] Some nonparticipating agencies, including FCC and SEC, have their own agency-specific websites for receiving public comments.[29] In addition to collecting comments, the selected agencies generally use their comment websites to post and share comments.[30]

Our 10 selected agencies generally accept comments on rulemaking proceedings through multiple methods. For example, each of the selected agencies offers an electronic form through which commenters can submit their comments and related identity information. Alternatively, some agencies may accept comments submitted by mail, email, or through an

[25]Indep. U.S. Tanker Owners Comm. v. Lewis, 690 F.2d 908, 919 (D.C. Cir. 1982); La. Fed. Land Bank Ass'n, FLCA v. Farm Credit Admin., 336 F.3d 1075, 1080 (D.C. Cir. 2003).

[26]City of Waukesha v. EPA, 320 F.3d 228, 258 (D.C. Cir. 2003).

[27]In October 2019, the General Services Administration (GSA) assumed the role of the managing partner of the eRulemaking Program, which had previously been held by the Environmental Protection Agency. GSA's eRulemaking Program Management Office is responsible for the development and implementation of Regulations.gov.

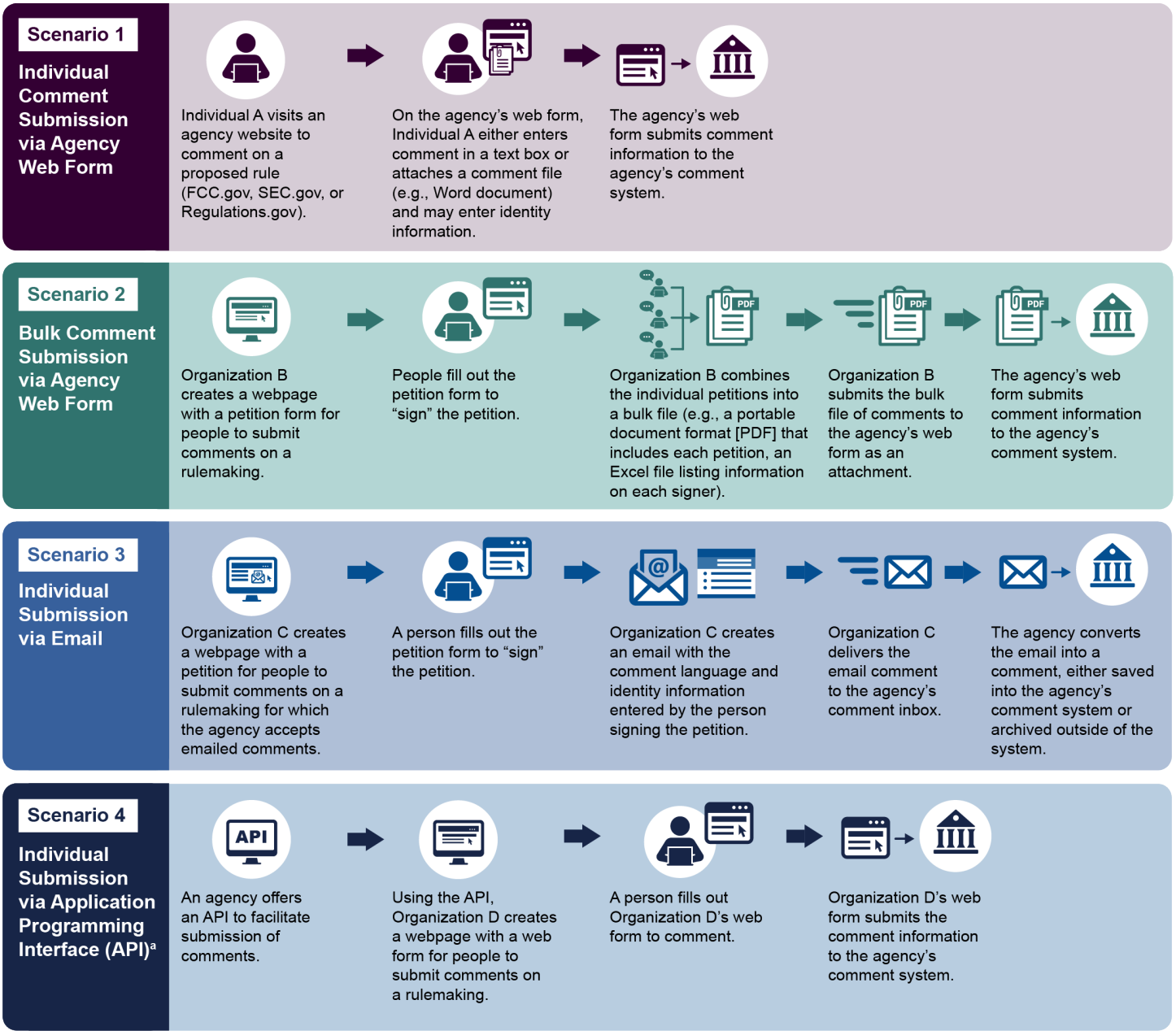
[28]These agencies may be components of larger departmental agencies.

[29]Specifically, FCC uses the Electronic Comment Filing System (ECFS), and SEC uses the Comment Letter Log. For more information on ECFS, the Comment Letter Log, and Regulations.gov, see GAO-19-483.

[30]For our purposes, posting a comment refers to an agency making a comment (and potentially some associated identity information) publicly accessible on its comment website. Sharing comment data refers to allowing external users to download comment data, either for an individual comment or for multiple comments.

API. Additionally, comments may be submitted individually or in bulk (e.g., a set of petitions combined in a single document). See figure 2.

Figure 2: Examples of Methods through Which Public Comments Can Be Submitted Electronically



Source: GAO analysis of selected agencies' comment websites and comment data. | GAO-21-103181

Text of Figure 2: Examples of Methods through Which Public Comments Can Be Submitted Electronically

Scenario 1: Individual Comment Submission via Agency Web Form

- Individual A visits an agency website to comment on a proposed rule (FCC.gov, SEC.gov, or Regulations.gov).
- On the agency's web form, Individual A either enters comment in a text box or attaches a comment file (e.g., Word document) and may enter identity information.
- The agency's web form submits comment information to the agency's comment system.

Scenario 2: Bulk Comment Submission via Agency Web Form

- Organization B creates a webpage with a petition form for people to submit comments on a rulemaking.
- People fill out the petition form to "sign" the petition.
- Organization B combines the individual petitions into a bulk file (e.g., a portable document format [PDF] that includes each petition, an Excel file listing information on each signer).
- Organization B submits the bulk file of comments to the agency's web form as an attachment.
- The agency's web form submits comment information to the agency's comment system.

Scenario 3: Individual Submission via Email

- Organization C creates a webpage with a petition for people to submit comments on a rulemaking for which the agency accepts emailed comments.
- A person fills out the petition form to "sign" the petition.
- Organization C creates an email with the comment language and identity information entered by the person signing the petition.
- Organization C delivers the email comment to the agency's comment inbox.
- The agency converts the email into a comment, either saved into the agency's comment system or archived outside of the system.

Scenario 4: Individual Submission via Application Programming Interface (API)[a]

- An agency offers an API to facilitate submission of comments.
- Using the API, Organization D creates a webpage with a web form for people to submit comments on a rulemaking.
- A person fills out Organization D's web form to comment.
- Organization D's web form submits the comment information to the agency's comment system.

[a]An API sets up machine-to-machine communication and allows users to connect directly with a website to provide or access data. Filing comments through an API allows interested parties the ability to file a large number of comments without having to submit multiple individual comment forms.

As we found in June 2019, the selected agencies use required and optional fields on electronic comment forms to collect some pieces of identity information from commenters, consistent with the discretion afforded by the APA.[31] For example, FCC's comment form requires commenters to provide a name and mailing address, whereas SEC's

[31]GAO-19-483.

comment form requires a name, an email address, and a phone number. Additionally, as we found in June 2019, regardless of the fields required by the comment form, the selected agencies all accept anonymous comments in practice.[32] Since we published that June 2019 report, Regulations.gov implemented a standardized comment form for all participating agencies.[33] Table 1 lists the fields available on the comment form based on the type of commenter the user selects.

Table 1: Fields on the Regulations.gov Electronic Comment Form as of June 2021

Field	Type of Commenter		
	Individual	**Organization**	**Anonymous**
Comment	Required	Required	Required
Email Address	Optional	Optional	Optional
First Name	Required	n/a	n/a
Last Name	Required	n/a	n/a
City	Optional	n/a	n/a
State	Optional	n/a	n/a
Zip	Optional	n/a	n/a
Country	Optional	n/a	n/a
Phone	Optional	n/a	n/a
Organization Type	n/a	Required	n/a
Organization Name	n/a	Required	n/a
reCAPTCHA[a]	Required	Required	Required

Legend: n/a = not applicable

Source: GAO summary of .Regulations.gov electronic comment form. | GAO-21-103181

[a]reCAPTCHA is a Completely Automated Public Turing test to tell Computers and Humans Apart (CAPTCHA) system intended to help protect websites from spam and abuse. According to Regulations.gov, reCAPTCHA is part of its ongoing efforts to support the integrity of the rulemaking process and manage the role of software-generated comments.

[32]GAO-19-483. For example, in the comment forms on Regulations.gov, as well as FCC's and SEC's websites, a commenter can submit a comment under the name "Anonymous Anonymous," enter a single letter in each required field, or provide a fabricated address. In each of these scenarios, as long as a character or characters are entered into the required fields, the comment will be accepted.

[33]For a list of the required and optional comment form fields on Regulations.gov by selected agency as of December 2018, see appendix III.

Prior GAO Work on Identity Information in the Public Comment Process

In June 2019, we reported on how selected agencies collect and treat identity information in the public comment process.[34] We found that seven of the 10 selected agencies had some internal guidance associated with the identity of commenters, generally relating to comment intake or responding to comments. We also found that, with the discretion afforded by the APA, selected agencies' treatment of identity information varied, particularly related to how agencies post duplicate comments (identical or near-identical comment text but varied identity information). Generally, officials told us that their agencies post all comments within the comment system or maintain some comments outside of the system. However, posting practices varied considerably—even within the same agency—and identity information was inconsistently presented on public websites.

Further, we found that selected agencies did not clearly communicate their practices for how comments and identity information are posted, information that could help users of the comment websites make more informed decisions about how to use the data. We recommended that eight of the 10 selected agencies more clearly communicate to the public their policies for posting comments and associated identity information to Regulations.gov and agency-specific comment websites. As of July 2021, all eight agencies implemented our recommendations.

Extent of Commenters with Email Addresses That Confirmed They Submitted Their Comments to Rulemaking Proceedings Varied across 10 Selected Agencies

Based on our survey, estimates of whether commenters with email addresses confirmed that they submitted their comments to rulemaking proceedings varied. Across the 10 selected agencies, our estimates range as follows.

- Commenters who confirmed that they submitted comments: from 48 to 87 percent

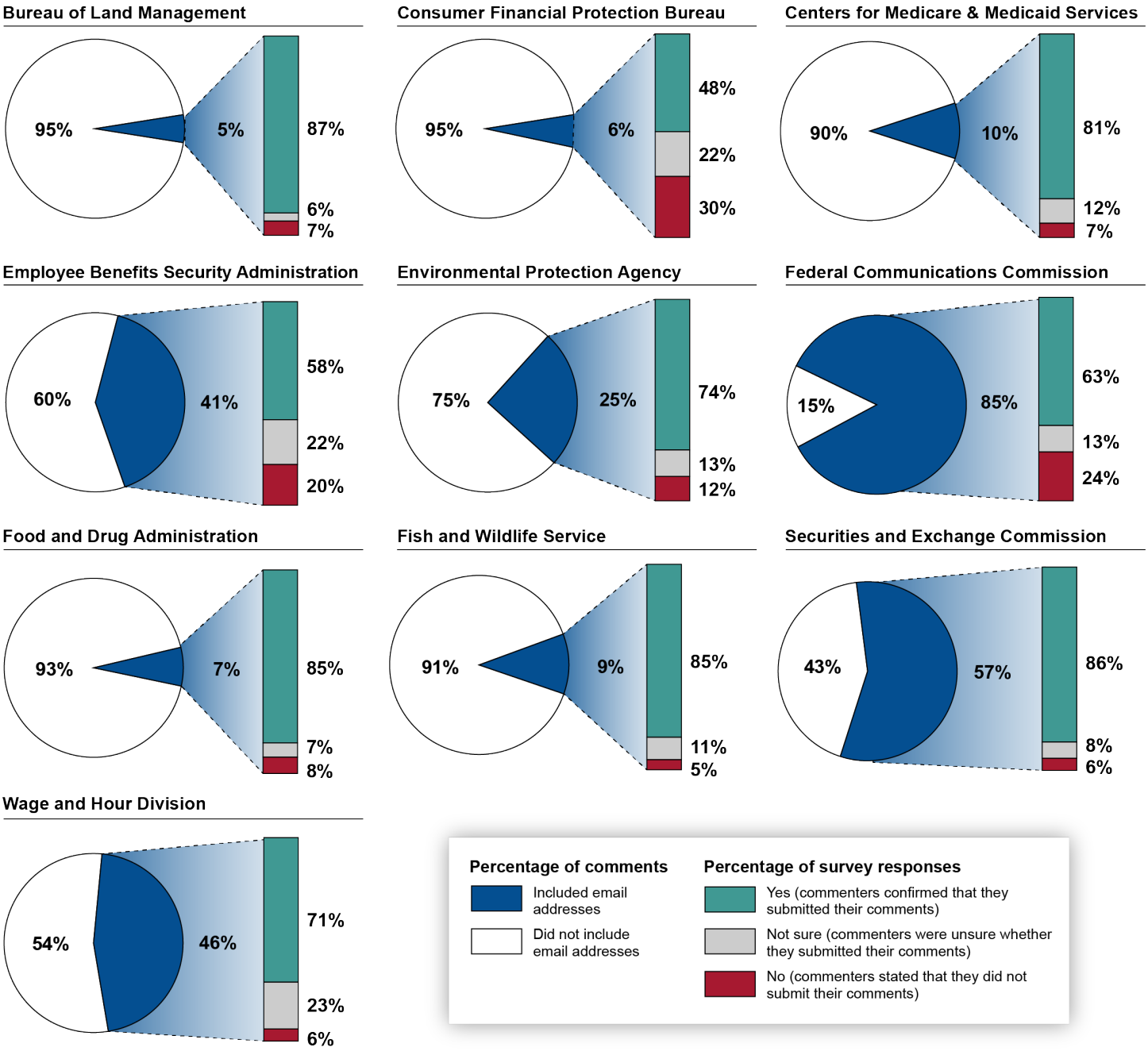
[34]GAO-19-483.

- Presumed commenters who did not submit comments associated with their identity information: from 5 to 30 percent
- Commenters who were not sure whether they submitted comments: from 6 to 23 percent

The majority of public comments at eight of the 10 selected agencies did not contain email addresses, while the majority of comments at FCC and SEC did contain email addresses. The percentage of comments with email addresses varied widely among the 10 selected agencies.[35] Figure 3 includes the percentages of comments with email addresses and estimated percentage of whether commenters with email addresses confirmed they actually submitted comments to rulemaking proceedings across the selected agencies.

[35]As previously discussed, because there is no legal requirement for a commenter to disclose identifying information, such as email address, the type of information collected by agencies varies.

Figure 3: Percentage of Comments with Email Addresses and Extent of Commenters with Email Addresses that Confirmed They Submitted Their Comments on Rulemaking Proceedings at 10 Selected Agencies



Source: GAO analysis of survey of public comments. | GAO-21-103181

Data table for Figure 3: Percentage of Comments with Email Addresses and Extent of Commenters with Email Addresses that Confirmed They Submitted Their Comments on Rulemaking Proceedings at 10 Selected Agencies

	Percentage of comments		Survey responses		
Agency	**Included email addresses**	**Did not include email addresses**	**Yes (commenters confirmed that they submitted their comments)**	**Not sure (commenters were unsure whether they submitted their comments)**	**No (commenters stated that they did not submit their comments)**
Bureau of Land Management	5%	95%	87%	6%	7%
Consumer Financial Protection Bureau	6%	95%	48%	22%	30%
Centers for Medicare & Medicaid Services	10%	90%	81%	12%	7%
Employee Benefits Security Administration	41%	60%	58%	22%	20%
Environmental Protection Agency	25%	75%	74%	13%	12%
Federal Communications Commission	85%	15%	63%	13%	24%
Food and Drug Administration	7%	93%	85%	7%	8%
Fish and Wildlife Service	9%	91%	85%	11%	5%
Securities and Exchange Commission	57%	43%	86%	8%	6%
Wage and Hour Division	46%	54%	71%	23%	6%

Note: Estimates in this figure have a margin of error of +/- 9 percentage points or fewer, at the 95 percent confidence level. Numbers may not always total 100 percent because of rounding.

Some survey respondents provided additional information related to their responses. Although it does not explain all survey responses, this information provides examples of why presumed commenters stated that they did not submit or were unsure whether they submitted their comments. Examples of these explanations are provided below.

Commenters who did not realize they were commenting on rulemaking proceedings. Some individuals may not be aware that their identity information is associated with a public comment. For example, two survey respondents provided the following information with their responses.

- "The contact info about me is correct, but the comment might have submitted by an organization for a petition I signed."
- "I may have signed something online that then forwarded this comment on my behalf. I did not compose it…"

Comments that may have used stolen or breached identify information. Some comments may have been submitted using certain pieces of identity information without the individual's authorization. In May 2021, the New York State Attorney General reported that one entity

submitted comments to FCC using data that had been stolen in a data breach and posted online, related to approximately 1.4 million people. The following are examples that survey respondents provided suggesting that their identity information may have been misappropriated.

- "…I have owned this email address for the last 15 years and even though the contact associated with the email address is not me, this information was clearly taken from a database which associates this name with this email address. This information is freely available on the web as I get plenty of spam with the same name…."
- "I'm curious who may have "borrowed" my identity to send this - I mainly agree with what is written, but it is not in my style and includes a few specifics I did not (and still do not) know about."

Comments that are several years old. Some survey respondents indicated that they were unsure whether they had submitted comments that agencies had received years before our survey.[36] For example, some survey respondents provided the following additional information with their responses.

- "After 3 years it's a little hard to remember every petition and submission I did at that time."
- "The date on the comment was almost 6 years ago. It is difficult to remember if I made the comment, however, all the information about me is correct, so there is a good possibility that I did."

In addition to and separate from our survey estimates of commenters that confirmed their submissions, we also identified comments in our survey sample with email addresses that were nonfunctional at the time of our survey. Our estimates of comments whose email addresses were nonfunctional at the time of our survey range from 5 to 46 percent across the selected agencies.[37] The nonfunctionality of email addresses might suggest that such comments may not have been submitted by the presumed commenters. However, our survey estimates of the percentage of commenters that confirmed whether they submitted comments nevertheless apply to all comments with email addresses—regardless of whether they are functional—because nonfunctional email addresses may exist for a variety of reasons that do not rule out submission

[36]Our survey, which was administered between June 2019 and November 2020, covered comments that were made on rulemakings that received comments between 2013 and 2017.

[37]See appendix II for more details on nonfunctional emails across the selected agencies.

confirmation. For example, some nonfunctional email addresses were associated with schools or organizations, rather than personal email accounts. A school or organization email address may have been functional at the time an individual submitted a comment. However, if the individual left the school or organization after submitting the comment, the associated email address may no longer exist. Alternatively, some email addresses in our survey sample may have never or only temporarily functioned.[38] For example, our survey sample of FCC comments included over 450 comments with disposable email addresses from a website that provides users with a one-time, temporary email address.[39] We found over 7.5 million comments with email addresses from this website in the overall population of over 23 million FCC comments with email addresses between 2013 and 2017.

Data Collected During the Commenting Process Do Not Conclusively Identify the Source of Unconfirmed Comments

Multiple factors can complicate efforts to identify the source of unconfirmed comments (i.e., those where, as part of our survey, commenters did not confirm that they submitted the comments associated with them).[40] For example, comments can have multiple potential sources and varied information associated with them, depending on how they were submitted. Regardless of how they were submitted, public comment data do not definitively identify the source of unconfirmed comments. As previously discussed, there is no legal requirement for agencies to collect or verify identity information related to commenters, nor any requirement for agencies to identify the actual source of comments or collect information that does so, because it is the substance of the comment that agencies must consider as part of the rulemaking process, rather than the identity of the commenter. However, comment data has been helpful in

[38]A commenter might enter a nonfunctional email on purpose or by accident (for example, by including a typo in the email address).

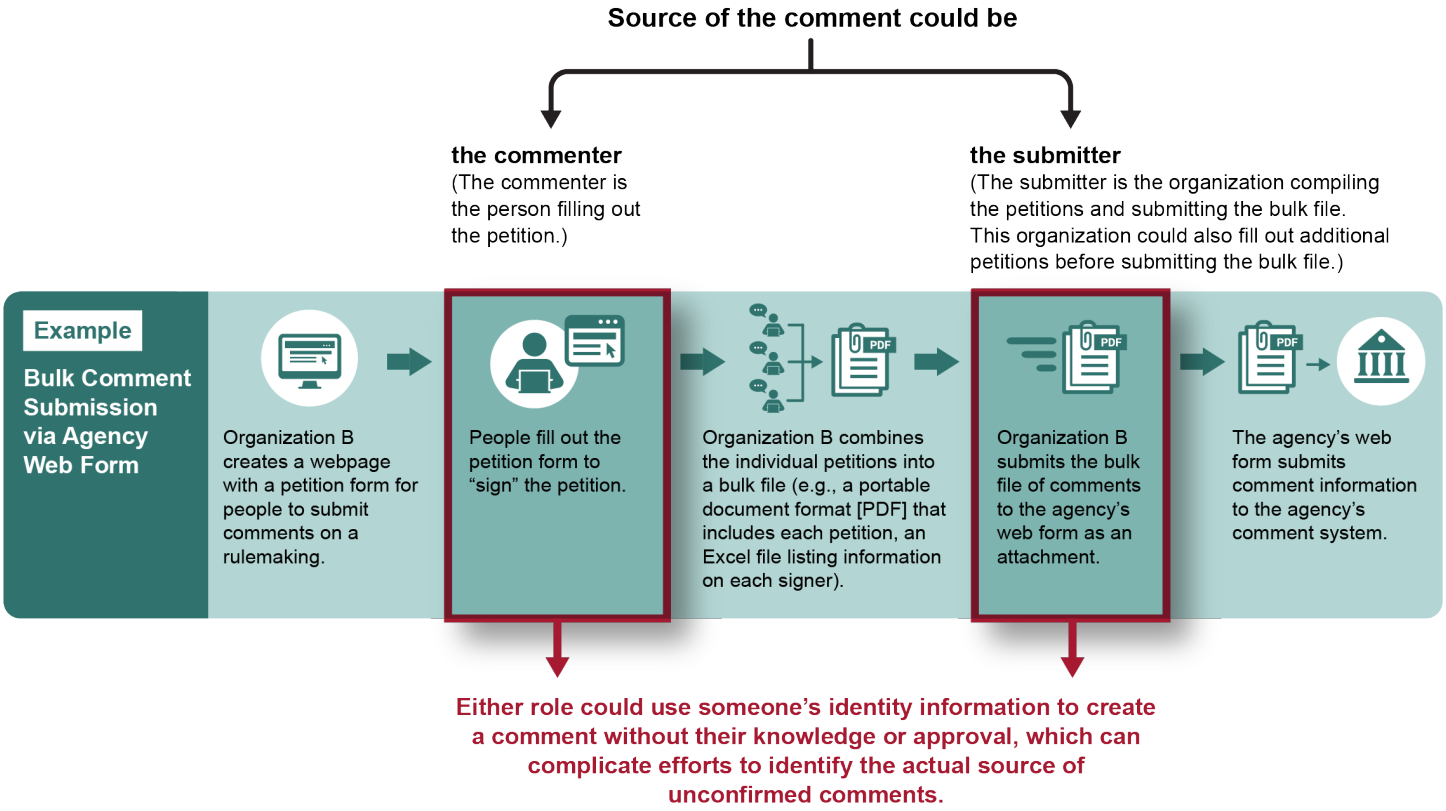
[39]According to its website, this service allows a user to circumvent email confirmations and avoid spam by using a temporary email address. The temporary email address is automatically deactivated 24 hours after the last time someone has checked for email at that address.

[40]For our purposes, we focused on two types of unconfirmed comments: comments for which (1) survey respondents indicated that they did not submit the comments, and (2) email addresses were nonfunctional.

conjunction with other information—specifically, subpoenaed communications and other records—to help to identify the actual source in some cases.

There are a variety of ways that public comments can be submitted to the selected agencies, and there may be multiple entities that could be considered the source of a comment. For example, figure 4 outlines one example of how a bulk submission of comments can occur (specifically, an organization soliciting signatures on a petition and then submitting the signed petitions to an agency's rulemaking proceeding). In this case, the source of the comment could be the person filling out the petition (i.e., the commenter) or the organization compiling the petitions and submitting the bulk file to the agency (i.e., the submitter). Either role could use someone's identity information to create a comment without his or her knowledge or approval.

Figure 4: Example of How Multiple Entities Could Be the Source of a Public Comment



Source: GAO analysis of selected agencies' comment websites and comment data. | GAO-21-103181

Text of Figure 4: Example of How Multiple Entities Could Be the Source of a Public Comment

Example

Bulk Comment Submission via Agency Web Form

Organization B creates a webpage with a petition form for people to submit comments on a rulemaking.

People fill out the petition form to "sign" the petition.

- Source of the comment could be the commenter (The commenter is the person filling out the petition.)
- Either role could use someone's identity information to create a comment without their knowledge or approval, which can complicate efforts to identify the actual source of unconfirmed comments.

Organization B combines the individual petitions into a bulk file (e.g., a portable document format [PDF] that includes each petition, an Excel file listing information on each signer).

Organization B submits the bulk file of comments to the agency's web form as an attachment.

- Source of the comment could be the submitter (The submitter is the organization compiling the petitions and submitting the bulk file. This organization could also fill out additional petitions before submitting the bulk file.)
- Either role could use someone's identity information to create a comment without their knowledge or approval, which can complicate efforts to identify the actual source of unconfirmed comments.

The agency's web form submits comment information to the agency's comment system.

Additionally, the data available to try to determine the source of unconfirmed comments can vary based how the comments were submitted. In general, comment data include comment text and associated metadata. Metadata may include commenter or submitter name, mailing address, email address, telephone number, and timestamps, among other administrative information.[41] For bulk comment submissions, the metadata may include information on the entity that submitted the bulk comment file. However, the comment data for bulk comments do not identify whether the entity that submitted the unconfirmed comments actually created them, or whether the actual creator solely used the entity's comment campaign to submit the unconfirmed comments.

Example of Limitations of Comment Data in Identifying the Source of Comments

One group of comments in our sample shared the same base comment text. All of the comments in this group were part of one bulk submission to Regulations.gov. The organization that submitted the comments is named in the metadata associated with the

[41]Metadata summarize and describe the data contained in a data set. For our purposes, metadata include anything that accompanies comment text.

submission, and further, we identified an online petition form on the organization's website that matched the comment text. However, this information does not identify whether any unconfirmed comments associated with this submission were created by the organization, or whether the actual creator of the comments simply used the organization's petition form to create the comments.

Source: GAO analysis of public comment data. | GAO-21-103181

In some cases, there may be additional information—not part of the comment data—that may provide context for comments, though as previously discussed, agencies are not required to collect information that could be used to verify commenters' identity information since it is the substance of the comment, rather than the identity of the commenter, that agencies must consider as part of the rulemaking process.[42] For example,

- For FCC's 2017 Restoring Internet Freedom rulemaking, FCC allowed commenters to use a file-sharing website to submit bulk files of comments using a specific template. For these bulk submissions, FCC maintained a submission time stamp, the email address entered by the submitter, and the file name of the attachment submitted.
- For comments submitted through FCC's API, there may be logs that document the requests to post comments to the agency's comment system.[43] It is important to note that these API logs do not contain any comment text and are not clearly linked to specific comments.

Similar to the comment data, as noted earlier, this information does not conclusively identify the source of unconfirmed comments. At most, it may provide information about the entity that submitted the comments, which may not be the entity that created the comments.

Although public comment data do not definitively identify the actual source of unconfirmed comments, the data may be used in conjunction with other information to identify the actual source in some cases. For example, the Office of the New York Attorney General obtained additional documents—email communications, planning documents, bank records, invoices, and other data—related to certain public comment campaigns through subpoenas. According to the office's report, this information

[42]In addition, in June 2019 we found that Regulations.gov and agency-specific comment websites also collect some information about public users' interactions with their websites through application event logs and proxy server logs. This information is collected separately from the comment submission process as part of routine information technology management of system security and performance. This information is not connected to specific comments submitted to agencies' rulemaking proceedings. See GAO-19-483.

[43]For FCC, the API logs include information about the request, such as time stamp, API key used, Internet Protocol address, and response status, among other things. They also include information about the registrant of the API key, including email address and Internet Protocol addresses used when registering.

ultimately led to the source of millions of comments submitted to FCC's 2017 Restoring Internet Freedom rulemaking.[44]

Aspects of the Commenting Process Can Pose Challenges for Certain External Users of Comment Data

Nine of the 10 selected agencies we reviewed externally share at least some of the public comments they receive as part of the rulemaking process.[45] External users may use the available comment data for analysis, but various aspects of the commenting process can create challenges for those who use the data for purposes other than evaluating compliance with APA requirements.[46] In contrast, SEC does not provide external users with a way to download bulk comment data, but it does post comments and provide tools for browsing comment letters, for example by date and submitter. SEC officials explained to us that they have not received much demand for a way to download bulk comment data.

We found that the nine agencies do not always fully describe the public comment data they share, such as defining what data elements mean or disclosing any limitations that may exist. Key practices for transparently reporting open government data state that federal government websites should fully describe the data that are made available to the public, such

[44]New York State Office of the Attorney General, *Fake Comments: How U.S. Companies & Partisans Hack Democracy to Undermine Your Voice* (May 6, 2021).

[45]For the purposes of this report, sharing comment data refers to allowing external users to download comment data, either for an individual comment or for multiple comments. Posting a comment refers to an agency making a comment (and potentially some associated identity information) publicly accessible on its comment website.

[46]We have previously reported on the usability of these agencies' electronic comment websites. See GAO, *Federal Rulemaking: Information on Selected Agencies' Management of Public Comments*, GAO-20-383R (Washington, D.C.: Apr. 16, 2020). Further, as previously discussed, the APA includes provisions on the scope of judicial review that establishes the bases under which a court shall find an agency's action unlawful, such as when the court finds that agency action, findings, and conclusions were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D). Given these provisions and relevant APA case law, we have no basis to conclude that the challenges we describe in this report would be relevant to the judicial review of the lawfulness of an agency's action.

as clearly labeling the data and disclosing limitations.[47] This helps public users make informed decisions about how to use the data.

Regulations.gov and FCC both list the data elements that may be available in their public comment data. However, our review of the Regulations.gov and FCC API websites found that while Regulations.gov defines its data elements, FCC does not provide an explanation of what its data elements mean. Specifically, Regulations.gov and FCC have webpages that help explain to the public how to use the APIs to download comment data. The General Services Administration (GSA) manages and maintains Regulations.gov's API webpage for participating agencies. Regulations.gov's API webpage lists available data elements and defines their meanings through detailed schemas. In contrast, FCC's API webpage lists available data elements but does not define them. FCC officials told us that the names of the data elements are self-explanatory. However, we identified multiple instances that may not be self-explanatory, such as "is_action," "attachments" (as opposed to the "documents" data element), "src", and "_index."

Based on our review of FCC's and Regulations.gov's API webpages, we found the sites do not describe potential limitations of the shared comment data.[48] Specifically, these limitations include variation in available data, accuracy of the data, and their importance to agencies' rulemaking decisions. Information on these limitations can be important to help external users make informed decisions about their use of the data and help ensure that they do not inadvertently draw inaccurate conclusions from the data.

Commenting processes can result in varied data. Agencies collect, post, and share different data elements as part of their commenting process. This can result in differences in available comment data and create limitations for external analyses across and within agencies.

- **Comment collection.** As noted earlier, agencies allow commenters to submit comments through various methods, and agencies collect different elements of information along with comments. For example,

[47]GAO-19-72.

[48]Participating agencies' commenting processes affect the resulting comment data. The Regulations.gov API webpage provides guidance on how to use the API to obtain comment data but does not specifically describe any agency's comment data.

as we reported in June 2019, FCC required commenters to provide their name and postal address, whereas EPA did not provide any identity information fields for required entry.[49] Since our June 2019 report, Regulations.gov developed a standard comment form for all user agencies, including EPA. However, the standard form may not result in consistent comment data, in part because, as our review of comment websites found, many fields remain optional.

Further, our review found that elements required on an agency's web form may not actually be required for alternative commenting methods, such as emailing comments or submitting a bulk file of comments as a single attachment. In these situations, the commenter does not use the agency's web form. For example, we identified that approximately 43 percent of one agency's comments did not contain email addresses even though it was a required field on the agency's web form at the time.[50] Information on whether specific data elements are required to submit a comment could be important to users whose analyses include those data elements.

- **Comment posting.** As we reported in June 2019, agencies vary in whether they post duplicate comments publicly.[51] While some agencies post all comments they receive, others maintain certain comments outside of their comment systems. For example, agencies may publicly post a single example of a set of duplicate comments, along with the total count of all related comments. However, each instance of the duplicate comments is not posted and therefore may not be readily available to external users. Therefore, information on whether all comments—including duplicates (and associated identity information)—are available could be important to users who may assume that the comment data are complete.
- **Comment sharing.** Agencies also vary in how they share comment data with external users through search and download capabilities. FCC and Regulations.gov allow for searching and API downloading of comments, while SEC does not. Further, our analysis showed that FCC provides additional information (commenter email address, in

[49]GAO-19-483.

[50]Online records show the agency's comment web form required email addresses in 2013. As of June 2021, the agency continues to require email addresses when individuals submit comments online.

[51]Duplicate comments are those with identical or near-identical comment text but varied identity information. See GAO-19-483.

particular) in API downloads, whereas Regulations.gov's API limits selected agencies' comment data to what is posted publicly.

It is important to note that the selected agencies' practices of posting and sharing identity information generally only pertain to identity information that is part of the metadata associated with a comment (i.e., not part of the comment text). Comments submitted in attachments (such as bulk submissions in a PDF or Excel file) often contain elements of identity information within the comment text. The selected agencies generally share these attachment files publicly, and our review of a sample of these files found that identity information (e.g., postal address or email address) was not redacted, although we found it was not posted in comments submitted individually that we reviewed.[52] A description of the posting and sharing of identity information could be important to users whose analyses include those data elements.

Comment data are self-reported. Identity information associated with public comments is self-reported and may not always be accurate. This may create a limitation for external users that expect the data to be accurate for purposes other than reviewing whether the agency complied with its obligations under the APA. Consistent with the APA, agencies are not required to verify identity information associated with comments because it is the substance of the comment, rather than the identity of the commenter, that agencies must consider and respond to as part of the rulemaking process. Commenters can enter any identity information when submitting a comment, whether it is theirs, someone else's, or fabricated. For example, as discussed earlier, between 5 and 30 percent of commenters with email addresses stated that they did not make comments associated with their identity information. Further, between 5 and 46 percent of email addresses associated with comments we surveyed were nonfunctional, which calls into question whether the email addresses ever existed. Explaining that comment data are self-reported and identify information is not verified could be important to users who may assume that the data are accurate.

Agency officials told us identity information may not be important to rulemaking decisions. Given that officials from several agencies told us that identity information does not affect their rulemaking decisions,

[52]According to the General Services Administration's privacy impact assessment for Regulations.gov, it is at the user agency's discretion whether they review all comments and uploaded documents for sensitive information and make use of redaction capabilities.

publicly sharing comments' identity information may imply that it is important to the rulemaking process. As we reported in June 2019, officials from eight of 10 selected agencies stated that the substance of the comments is considered during rulemaking rather than the submitted identity information.[53] Further, officials from six of these agencies emphasized that because the agency accepts anonymous comments, identity is not relevant to their analysis of the comments. Officials from four of the selected agencies stated that identity information may be noted in certain instances, such as in writing the response to comments or in helping the agency prepare a defense in the event that a lawsuit is filed. However, most of the agencies we reviewed post and share some identity information along with comments they receive.[54] A description of how agencies use comment data could help ensure that external users do not inadvertently draw inaccurate conclusions from the data.

Overall, although it is sufficient for agencies' rulemaking purposes, these aspects of the commenting process can affect the comment data that agencies share externally and may create limitations for external analysis, particularly if users expect the data to be complete, accurate, and important to rulemaking decisions. Fully describing public comment data that agencies share, including what data elements mean and any limitations that may exist, could better inform external parties that may be interested in analyzing the data and help ensure that they do not inadvertently draw inaccurate conclusions from the data.

Conclusions

The public comment process allows interested parties to state their views about proposed rules, which agencies use to carry out statutory directives to achieve public policy goals such as protecting the health and safety of the public and the environment. Regulations.gov's Commenter Checklist notes that the comment process is not a vote; instead, agencies consider the substance of comments as part of the rulemaking process. The APA does not require commenters to provide identity information with their comments, and agencies have no obligation to verify such information. Based on our survey, the extent of commenters with email addresses that

[53]GAO-19-483.

[54]Not all agencies provided clear reasons for why they share specific elements of public comment data. For example, officials at one agency noted that these decisions were made at the time each version of the agency's commenting system was built. However, the agency does not have documentation about these decisions.

confirmed they submitted their comments to rulemaking proceedings varied across the 10 selected agencies. Estimates of presumed commenters with email addresses that did not submit comments associated with them ranged from 5 percent to 30 percent across the selected agencies. As there is no legal requirement to verify identity information, the information collected during the commenting process does not definitively identify the source of public comments. In some cases, comment data can be used in conjunction with other information, like subpoenaed communications, to determine the source of comments.

The E-Government Act requires agencies to make rulemaking materials—including public comments—available online, to the extent practical. FCC and SEC use their own commenting systems, while the remaining eight agencies we reviewed use Regulations.gov, which is managed by GSA. Nine of the 10 agencies we reviewed externally share at least a portion of the public comments they receive as part of the rulemaking process through APIs. However, these agencies (including GSA) generally do not fully describe the comment data that they currently share, which would align with key practices for transparently reporting open government data. For example, FCC provides users of the data with a list of available data elements but does not define what the data elements mean. Although it is sufficient for agencies' rulemaking purposes, aspects of the commenting process can create limitations for certain external users of public comments, particularly if users expect the data to be complete and accurate. Consistent with key practices for reporting open government data, fully describing available public comment data, including defining what data elements mean and disclosing any limitations, would allow external users to determine whether the data are suitable for their intended purpose and to make informed decisions about whether and how to use it.

Recommendations for Executive Action

We are making a total of 10 recommendations, including nine to selected agencies that share public comment data: one each to FCC, BLM, CMS, CFPB, EBSA, EPA, FWS, FDA, and WHD; and one to GSA as the manager of Regulations.gov. Specifically:

The Chair of FCC should fully describe available public comment data, including what data elements mean and any limitations, to external users of the data. (Recommendation 1)

The Director of BLM should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate. (Recommendation 2)

The Administrator of CMS should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate. (Recommendation 3)

The Director of CFPB should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate. (Recommendation 4)

The Assistant Secretary of Labor for EBSA should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate. (Recommendation 5)

The Administrator of EPA should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate. (Recommendation 6)

The Director of FWS should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate. (Recommendation 7)

The Commissioner of FDA should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate. (Recommendation 8)

The Administrator of WHD should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate. (Recommendation 9)

The Administrator of GSA should coordinate with participating agencies to ensure that full descriptions of available public comment data—to include

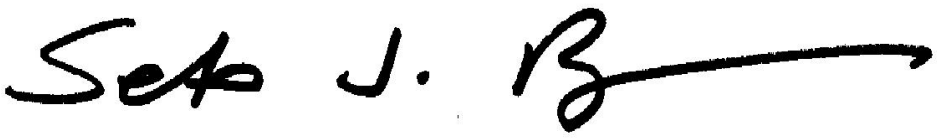
any limitations—are available to external users of the Regulations.gov API. (Recommendation 10)

Agency Comments

We provided drafts of this product for comment to BLM, CFPB, CMS, EBSA, EPA, FCC, FWS, FDA, GSA, SEC, and WHD. We received written comments from CFPB, EBSA, EPA, FCC, GSA, WHD, and the Departments of Health and Human Services (for CMS and FDA) and the Interior (for BLM and FWS). The written comments are reproduced in appendixes IV through XI. These agencies generally agreed with the recommendations and discussed plans to implement them. SEC had no comments on the draft report. Additionally, CFPB, FCC, and the Department of Health and Human Services provided technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees; the Acting Director of CFPB; the Administrator of EPA; the Acting Chairwoman of FCC; the Administrator of GSA; the Chair of SEC; and the Secretaries of Health and Human Services, the Interior, and Labor. In addition, the report will be available at no charge on the GAO website at https://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-6722 or bagdoyans@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff that made key contributions to this report are listed in appendix XII.



Seto J. Bagdoyan
Director of Audits
Forensic Audits and Investigative Service

List of Requesters

The Honorable Rob Portman
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable James Lankford
Ranking Member
Subcommittee on Government Operations and Border Management
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Robert C. “Bobby” Scott
Chairman
Committee on Education and Labor
House of Representatives

The Honorable Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
House of Representatives

The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
House of Representatives

The Honorable Carolyn B. Maloney
Chairwoman
The Honorable James Comer
Ranking Member
Committee on Oversight and Reform
House of Representatives

The Honorable Gerald E. Connolly
Chairman
Subcommittee on Government Operations
Committee on Oversight and Reform
House of Representatives

The Honorable Thomas R. Carper
United States Senate

The Honorable Yvette D. Clarke
House of Representatives

The Honorable Hakeem S. Jeffries
House of Representatives

The Honorable Gregory W. Meeks
House of Representatives

The Honorable Paul D. Tonko
House of Representatives

The Honorable Nydia M. Velázquez
House of Representatives

Appendix I: Agency Selection and Preparation and Analysis of Comment Data

Agency Selection

To address our objectives, we selected 10 agencies (selected agencies) as case studies that received a high volume of public comments during the course of rulemaking proceedings from January 1, 2013, through December 31, 2017.[1] Included in these selected agencies were eight agencies that use Regulations.gov as their agency's comment website ("participating agencies") and two agencies that operate agency-specific comment websites ("nonparticipating agencies"). Further, six of the selected agencies are component agencies within a larger department, as indicated below. The selected agencies are as follows:

Participating Agencies

- Bureau of Land Management (BLM), Department of the Interior;
- Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services;
- Consumer Financial Protection Bureau (CFPB);
- Employee Benefits Security Administration (EBSA), Department of Labor;
- Environmental Protection Agency (EPA);
- Fish and Wildlife Service (FWS), Department of the Interior;
- Food and Drug Administration (FDA), Department of Health and Human Services; and
- Wage and Hour Division (WHD), Department of Labor.

[1]This scope is consistent with our prior report on identity information in the public comment process. See GAO, *Federal Rulemaking: Selected Agencies Should Clearly Communicate Practices Associated with Identity Information in the Public Comment Process*, GAO-19-483 (Washington, D.C.: June 26, 2019).

Nonparticipating Agencies

- Federal Communications Commission (FCC); and
- Securities and Exchange Commission (SEC).

All 10 agencies were selected based on the total number of rulemaking comments that Regulations.gov and other agency-specific comment websites reported they received from January 1, 2013, through December 31, 2017. We selected this period to include comments submitted to rulemakings across two presidential administrations and 5 complete calendar years. At the time our review began, 2017 was the most recent complete calendar year. The selected agencies represent a nongeneralizable sample, and findings from this report cannot be generalized to all agencies that receive public comments as part of their rulemaking proceedings. However, as reported by Regulations.gov, the comments submitted to the eight participating agencies we selected represent more than 90 percent of all comments submitted to all participating agencies during the 5-year period.[2]

To select participating agencies, we obtained publicly available data from Regulations.gov for all agencies that had rulemaking dockets where comments were submitted from January 1, 2013, through December 31, 2017.[3] On the basis of the comment numbers reported by the website, we selected the eight participating agencies with more than 500,000 comments submitted to dockets that accepted comments during this time. To identify nonparticipating agencies that received a high volume of comments, we obtained a list of rules submitted to GAO for review under the Congressional Review Act from January 1, 2007, through December

[2]We made our selection of participating agencies to include agencies that received a high volume of comments based on the total number of comments as reported by Regulations.gov. We determined that the data from Regulations.gov are sufficiently reliable for the purposes of this report, to include providing us with a relative comparison of comment volume between participating agencies for the purposes of case study selection. However, in working with these data, we found that, in some cases, the total numbers as reported by Regulations.gov do not accurately reflect the total number of comments submitted to an agency. Therefore, we are not including these total numbers in this report.

[3]Dockets that accepted comments from January 1, 2013, through December 31, 2017, may have also received comments outside of this date range. These comments are included in the total comment count used to select participating agencies.

31, 2017.[4] We identified four agencies with more than 10 rules submitted during the period (at least one rule per year). We then contacted these agencies to determine how many total comments were submitted to the agencies from January 1, 2013, through December 31, 2017, on all rulemakings. Two of the four agencies were unable to provide us with the total number of comments received over the 5-year period; accordingly, we selected the two that provided us with comment numbers, FCC and SEC. Both FCC and SEC received a number of comments comparable to the selected participating agencies.

Data Preparation and Analysis

For each of the 10 selected agencies, we obtained electronic comment data for rulemakings that accepted comments from January 1, 2013, through December 31, 2017.[5] Comment data include comment text and associated metadata. Although it varies by agency, metadata may include commenter or submitter name, mailing address, email address, telephone number, and time stamps, among other administrative information.[6] To assess the reliability of the data, we reviewed relevant documentations, interviewed agency officials, and conducted testing to identify missing

[4]Congressional Review Act, Pub. L. No. 104-121, title II, subtitle E, § 251, 110 Stat. 847, 868 (Mar. 29, 1996), codified at 5 U.S.C. §§ 801–808. The statute requires all federal agencies to submit a report on each new "rule" to both houses of Congress and to the Comptroller General before it can take effect. 5 U.S.C. § 801(a)(1)(A). For the purposes of the Congressional Review Act, a "rule" is defined under § 804(3). The agency must submit to the Comptroller General a complete copy of the cost-benefit analysis of the rule, if any, and information concerning the agency's actions relevant to specific procedural rulemaking requirements set forth in various statutes and executive orders governing the regulatory process. Id. § 801(a)(1)(B).

[5]FCC uses its commenting system to solicit comments on rulemaking and non-rulemaking dockets. However, FCC officials told us that the comment data do not identify whether specific comments were made to rulemaking or non-rulemaking dockets. As a result, the FCC comment data we obtained and our related analyses include a small amount of non-rulemaking comments (less than 2 percent of all FCC comments). Additionally, because of the high volume of comments and the time needed to complete the request, EPA was unable to provide us with all comments maintained outside of its comment system (i.e., archived comments). To streamline our request, we requested a sample of EPA dockets with archived comments. As a result, our analyses related to EPA reflect only comments maintained in EPA's comment system and the sample of archived comments we obtained.

[6]As we found in June 2019, consistent with the discretion afforded by the Administrative Procedure Act, agencies collect varied information from commenters. Consequently, the data elements included in agencies' comment data vary. See GAO-19-483.

data. We determined that the data were sufficiently reliable for the purposes of this report.

Public comments can be submitted in a variety of ways and formats, including attachment files (e.g., Microsoft Word or Adobe portable document format (PDF) files, etc.). These attachment files can contain a single comment or consist of multiple comments. To address these differences and prepare the comment data for analysis, we extracted text from attachment files and developed a model to identify individual comments in the attachment files.

To analyze the public comment data and administer our survey of commenters, we first had to build a one-comment-per-row data set. With a one comment-per-row-dataset, we sought to do the following:

1. Identify the total number of comments,
2. Identify the total number of comments with emails,
3. Design a sample for our survey of comments with emails,
4. Design a sample to describe the population of comments, and
5. Cluster similar comments together.

While FCC's comments were stored in a single format that allowed us to easily transform it into a one-comment-per-row data set, the comments for all other selected agencies were stored in a variety of formats. A single comment could be included in a web form, but a comment could also be stored in attachment. Further, an attachment could consist of a single comment or many comments.

Building the Dataset

Our first task was to build a one-comment-per-row dataset for comments with attachments. To build this dataset, we proceeded along the following steps:

1. Extract text from attachments,
2. Build a model to predict the structure of the attachments, and
3. Parse the attachments according to the model prediction.

Text Extraction

To extract text from attachments, we used a toolkit that detects and extracts metadata and text from over 1,000 different file types.

Model Building

To build a model to predict the structure of the attachments, we first generated a coding scheme of structure of attachments. Attachments were grouped into the following structure categories:

1. Single comment all file types,
2. One comment per page PDF,
3. Variable length comments all file types, and
4. Signatures all file types.

After developing this coding scheme, we then took a random sample of attachments, stratified by agency, file type, and file size. With this sample, we were able to develop a training data set on which we could train a model to predict the structure of attachments. We chose to use a Lasso Regression to predict the structure of attachments. For the model, we used a multiclass Lasso regression. A Lasso regression finds values for predictors by minimizing the following equation:

$$\min_{\beta_0,\beta} \frac{1}{N} \sum_{i=1}^{N} w_i l(y_i, \beta_0 + \beta^T x_i) + \lambda \left[(1-\alpha)||\beta||_2^2/2 + \alpha||\beta||_1 \right],$$

over a grid of values of λ covering the entire range of predictors. Here l(y,η) is the negative log-likelihood contribution for observation i. The elastic-net penalty is controlled by α, and bridges the gap between lasso (α=1, the default) and ridge (α=0). The tuning parameter λ controls the overall strength of the penalty. For the Lasso regression, this minimization function is equivalent to minimizing the sum of squares in a linear regression with the added constraint introduced by λ that $\sum_{j=1}^{p} |\beta_j| \leq s$. This constraint results in the coefficients being shrunk toward zero. The shrinking of coefficients toward zero was an attractive feature for predicting the structure of the attachment because we use a large number of predictors, many of which we wanted to drop out of the model to avoid overfitting.

The predictors of the model were as follows:

1. File size,
2. File type,
3. Agency,
4. File Size percentile,
5. File Size Category (Large or other),
6. Page Category (1, 2, or more than two),
7. Number of people,
8. Number of emails,
9. Similarity Category (Not applicable, Similar, or Dissimilar),
10. Number of pages,
11. Number of organizations,
12. Number of consecutive people,
13. Number of instances of “from,”
14. Number of instances of “sincerely,”
15. Number of instances of “dear,”
16. Number of line breaks,
17. Number of characters,
18. Number of total people*,,
19. Number of total organizations*,
20. Number of total consecutive people*,
21. Number of total instances of “from”*,
22. Number of total instances of “sincerely”*,
23. Number of total instances of “dear”*,
24. Number of total line breaks*, and
25. Number of total characters*.

* = Separate models were run for PDF attachments and all other types of attachments. For PDF attachments, the attachments were split into separate pages, so the total predictors are the total number of the predictor across the entire attachment, as opposed to the specific page.

Attachment Parsing

We then parsed the attachments according to the model prediction. More specifically, if we predicted the attachment was a single comment, we combined all of the text from that file into a single comment. If we predicted the attachment was a PDF with one comment per page, we split the attachment by page and considered each page a distinct comment. If we predicted the attachment was a PDF with variable length comments or multiple comments of any other type of attachment, we split the text by line break, and then looked for the most common words at the beginning of the character vector over the entire the attachment. We then used this word (or words) to split the text into comments. For example, consider the raw text of “Dear Fish and Wildlife, please stop this rule. Sincerely, Joe \n Dear Fish and Wildlife, please stop this rule. Sincerely, Stacy. \n Dear Fish and Wildlife, please stop this rule. Sincerely, Stephanie.” “Dear” would be the optimal token to use to split the text into comments because it occurs frequently at the start of each character vector when we split by line break (\n).

Accuracy Check

To assess the predictive accuracy of the models, we split the coded data set into a training and test set. The training set was comprised of 80 percent of the coded data, and the test set was comprised of the remaining 20 percent of the coded data. The models were built with the training data, and predictive accuracy was assessed on the test data. The accuracy for the model trained on coded PDFs and the model trained on all other attachments is captured in table 2.

Table 2: Accuracy of Models Based on Attachment Type

	Accuracy	
Attachment Structure	**Model trained on coded PDFs**	**Model trained on all other attachment types**
Single	1.00	.92
One Comment Per Page	1.00	N/A
Variable Comment Length	1.00	.93
Signatures	1.00	.99

Legend: n/a = not applicable. PDF = portable document format. It is not possible to separate text by page for any attachment type other than PDF.

Source: GAO analysis. | GAO-21-103181

After modeling, the initial datasets were created for each agency, where each row in each data set reflects a single comment. In order to assess the accuracy of our final data sets, we generated three outcomes to assess: (1) Exclude, (2) Include (No Contactable Email), and (3) Include (Contactable Email). Excluded comments were comments that were incorrectly parsed (e.g., double counting a comment because of an extraneous email). Included comments without a contactable email were comments that are part of the population frame, but had no email to contact for the survey. Included comments with a contactable email were a part of the population frame that had an email to contact for the survey.[7]

After the data sets were created, a sample of comments were manually verified to determine the accuracy of the created data set. We stratified by outcome and randomly sampled in the following way:

1. 100 Exclude,
2. 100 Include (No Contactable Email), and
3. 500 Include (Contactable Email).

For each stratum, we reviewed whether the comment pulled from the attachment was correctly parsed. In events where the comment was not correctly parsed, we inserted the correct number of comments in the spreadsheet. Then for each stratum, we tallied (1) the number and percentage of comments parsed correctly, and (2) the ratio of the predicted number of comments to the actual number of comments. The percentage of comments parsed correctly and ratio between the predicted number of comments and actual number of comments for each agency are listed in table 3.

Table 3: Results of Comment Parsing

Agency	Percentage of comments parsed correctly	Ratio of the predicted and actual number of comments
Bureau of Land Management	89	1.01
Consumer Financial Protection Bureau	90	1.02
Centers for Medicare & Medicaid Services	96	.99

[7]For this purpose, contactable email refers to any email that we could use to deliver a survey. It does not mean that the email address was functional.

Agency	Percentage of comments parsed correctly	Ratio of the predicted and actual number of comments
Bureau of Land Management	89	1.01
Employee Benefits Security Administration	93	.98
Environmental Protection Agency	79	.89
Food and Drug Administration	91	.97
Fish and Wildlife Service	90	1.12
Securities and Exchange Commission	98	.95
Wage and Hour Division	91	.83

Source: GAO analysis. | GAO-21-103181

Describe Data Set

Our next task was to describe the data set. To describe various characteristics of the comments, for each agency, we built a sample of 500 comments from the one-comment-per-row data set describe above. With this sample of 500 comments, we then tagged the text for various characteristics (e.g., name, address, phone number of commenter) using an open-source text annotation tool. These tagged data were later combined with the population of comments without attachments in order to report out various characteristics of the comments for each agency. In order to ensure reliability of the tagged data, two coders generated tags for each comment, and then the kappa statistic was generated for each agency across each measure (e.g., name, address, phone number of commenter). The kappa statistic is a measure of interrater reliability that measures the agreement between two raters. It is preferred over percent agreement between coders because it corrects for random change of agreement, making it a more conservative measure of agreement. The equation for the kappa statistic is:

$$\kappa = 1 - \frac{1 - p_0}{1 - p_e}$$

where p is the relative observed agreement among raters, and p_e is the hypothetical probability of chance agreement, using the observed data to calculate the probabilities of each observer randomly seeing each category. The kappa statistics for each agency are detailed in table 4. Because the kappa statistics were generated on a sample of the data, associated lower and upper bounds are presented.

Table 4: Kappa Statistics and Related Lower and Upper Bounds

Agency	Estimate	Lower Bound	Upper Bound
Bureau of Land Management	.91	.89	.93
Consumer Financial Protection Bureau	.94	.92	.96
Centers for Medicare & Medicaid Services	.95	.93	.96
Employee Benefits Security Administration	1.00	1.00	1.00
Environmental Protection Agency	.88	.85	.90
Food and Drug Administration	.75	.72	.79
Fish and Wildlife Service	.91	.88	.93
Wage and Hour Division	.94	.91	.96

Source: GAO analysis. | GAO-21-103181

As a final accuracy check, we compared the 10 largest differences between our number of comments for each attachment and the agencies' recorded number of comments. We manually fixed any errors in parsing that we identified.

For the Securities and Exchange Commission, we built a similar sample of comments and coded the corresponding identity information, but instead of establishing a kappa statistic, we ensured 100 percent agreement between two coders.

Cluster Comments

Our final task was to cluster similar comments together. More specifically, we wanted to cluster the comments in our survey to identify campaigns in which a relatively high number of people responded that they did not submit the comment or did not know whether they submitted the comment. The challenge we faced was that a campaign can feature comments in which the text is different for each comment, but the meaning of each comment is identical. Below we describe the steps we took to establish similarity in meaning of comments.

Word Embeddings

In order to cluster comments together, we first trained word embeddings over all of the comments for each agency. A word embedding is a dense representation of a word. In a sparse representation of a word, each word is represented as a "one-hot vector" where each word in a comment is represented by a vector that contains a 1 for the word and a zero for all

other words contained in the entire dataset. In a dense representation, each word is represented by a vector of length 50-100. To train word embeddings, we used the Continuous Bag of Words model in Gensim, a popular Python library for Natural Language Processing. A Continuous Bag of Words model trains embeddings that maximize the predictive accuracy of a target word from context words (e.g., the likelihood that a target word will occur within an arbitrary window of words). The Continuous Bag of Words model trains a log-linear classifier that seeks to predict each word in the corpus from context words. The model works as follows:

1. Treat the target word and a neighboring context word as positive examples.
2. Randomly sample other words in the lexicon to get negative samples.
3. Use logistic regression to train a classifier to distinguish those two cases.
4. Use the learned weights as the embeddings.

Importantly, the size of the weight vector is arbitrary. The model learns weights that maximize predictive accuracy, but those weights can be any size; we used vectors of size 100. More formally, the Continuous Bag of Words algorithm minimizes the following loss function:

$$-\log\left(\sigma(\vec{w} * \vec{c})\right) - \sum_{i=1}^{k} log\left(\sigma(\overrightarrow{-w} * \overrightarrow{c_N}, i)\right)$$

where σ is the sigmoid function, w is the target word, and c is the mean of the context words (window around w of maximum size L). For each word, $\vec{w}$ and $\vec{c}$ are represented by dense vectors. The Continuous Bag of Words algorithm learns the weights that minimizes the above loss function, and then these weights are used as embeddings. For each observation of (w, c) the Skipgram algorithm forms k negative samples (w, cN, i) by sampling k words in the corpus from a σ – smoothed unigram distribution:

$$P(c) = \frac{f(c)^{a}}{\sum c' f(c')^{a}}¶$$

where f(c) represents the frequency of the word and α smooths the distribution. An α equal to 1 leads to sampling based on the frequency distribution, whereas α = 0 leads to an equal probability of sampling each word. So far, we have discussed three hyperparameters used to train word embeddings: vector size, context window, and α. There are many others that impact the performance of the model. The full list of hyperparameters we used for the Continuous Bag of Words model were as follows:

- Vector size: 100
- Learning rate: .025
  - The learning rate is the speed at which the Continuous Bag of Words model updates its weights to learn the weights that maximize predictive accuracy
- Context window: 5
- Minimum word frequency: 5
  - We removed all words that occurred less than 5 times
- Threshold for downsampling higher-frequency words: .001
  - Words that occurred at a proportion of .001 were downsampled
- Numbers of negative samples for each word: 5
- Exponent (α) used to shape the negative sampling distribution: .75
- Use the mean of context words in predicting the target word
- Number of iterations over the entire corpus to learn weights: 5

These hyperparameters correspond to the defaults included in the Gensim's Continuous Bag of Words model and were deemed suitable for our purposes, as assessed by the face validity of the clusters of comments identified by k-means clustering (described below).

Document Embeddings

Next, we constructed document embeddings. The document embeddings were simply the average of all the word vectors for a given comment.

K-Means Clustering

Finally, with each comment in the entire dataset represented by a document embedding, we applied k-means clustering on the surveyed comments. We trained the document embeddings on the entire dataset because word (and document) embeddings perform better with a larger number of words. However, we were only interested in how the clusters of comments related to survey responses, so k-means clustering was only performed on the survey comments.

K-means clustering is an algorithm that seeks to group data points into clusters so that each cluster has minimal within-cluster variation. More formally, k-means clustering seeks to minimize the following function:

$$\sum_{k=1}^{K} \frac{1}{|C_k|} \sum_{i,i' \in C_k} \sum_{j=1}^{p} (x_{ij} - x_{i'j})^2$$

where k is a user-defined hyperparameter for the number of clusters and $|C_k|$ is the number of observations in the kth cluster. More generally, k-means clustering seeks to reduce the sum of all the within-cluster variation for the kth cluster by minimizing the sum of all of the pairwise squared Euclidean distances between the observations in the kth cluster, divided by the total number of observations in the kth cluster.

In order to minimize the above function, k-means clustering proceeds along the following steps:

1. Randomly assign a number from 1 to K to each observation.
2. Iterate until the clusters stop changing:
    a. For each cluster, compute the centroid. The centroid is the p feature means of each observation in the cluster.
    b. Assign each observation to the cluster whose centroid has the shortest Euclidean distance to it.

To find an optimal number of clusters, we examined k from 30 to 150 and selected the solution that had the best balance of error reduction and parsimony. Further, we compared the raw comment text to the cluster solution for face validity.

Results

Based on the steps above, we were able to transform the selected agencies' comment data into usable data sets that allowed us to identify (1) individual comments, (2) comments with email addresses, (3) characteristics of each agency's population of comments, and (4) clusters of similar comments for further analysis. We also used these data sets to administer our survey of commenters, as discussed in appendix II.

Appendix II: Survey of Commenters

To determine the extent to which commenters confirmed that they submitted comments on federal rulemaking proceedings for selected agencies, we emailed a questionnaire to the presumed commenters of a random sample of 14,427 electronic comments received by 10 agencies from January 1, 2013, through December 31, 2017, and for which a commenter's email address was available. We received usable questionnaire responses for 4,980 of the comments, an overall response rate of 41 percent.

Sample design

We defined the survey's target population as all electronic comments received by the 10 selected agencies, from 2013 through 2017, with email addresses. To create a list or sample frame—representing the target population and from which to draw our sample—we used the comment dataset built from agency comment files as described in appendix I. Approximately 26 million comments qualified for the target population.

Our sample of 14,427 comments was designed to make estimates to the overall target population at a high level of precision, and at a lower level of precision within 21 categories, or strata, of individual agency and comment types. Based on expected response rates, or response rates from earlier waves of sample administered during the survey, we sampled enough comments from each stratum to result in at least 97 responses, which would ensure percentage estimates with sampling errors of no more than plus or minus 10 percentage points, at a 95 percent level of confidence. See the "Survey quality and error" section below for a discussion of sampling error. The numbers of comments making up our target population and survey sample in each stratum are shown in table 6, found later in this appendix.

Some agency and comment-type strata had unique conditions that determined the number of comments sampled:

- None of the Environmental Protection Agency non-attachment comments had email addresses, so this stratum was not created.

- 472 of the Employee Benefits Security Administration non-attachment comments had email addresses, so all were sampled.
- Additional Federal Communications Commission (FCC) substrata were created to sample comments on the rulemakings related to net neutrality separately from those that were in response to other dockets because of the volume of comments submitted on these rulemakings; without these substrata, the FCC samples would be predominantly composed of net neutrality comments.

Questionnaire design

Our self-administered emailed questionnaire presented each presumed commenter with the text of their comment (up to the first 400 characters) and the following information associated with the submission, as available: comment submission date, docket identifier code, docket title, and the commenter's email, name, address, and phone number. We asked presumed commenters if they had submitted the comment, to which they could answer Yes, No, or Not sure. An answer to that question launched additional web-based questions that asked respondents who had given "no" or "not sure" answers to further describe their situation, which also served to confirm their final answer. Respondents were also able to navigate between the follow-up questions and change their initial answers after receiving the follow-up questions, in case this further consideration of submission circumstances prompted new memories or different conclusions about the source of the comment. Below is a facsimile of the questionnaire text.

Commenter Questionnaire

From: US GAO Survey on Public Comments [mailto:publiccommentsurvey@gao.gov]
Sent: Tuesday, August 27, 2019 9:01 PM
Subject: Did you submit this comment?

GAO

The U.S. Government Accountability Office (GAO) is studying how public comments on proposed regulations are submitted to federal agencies. We want to know whether the comments are actually coming from the people whose names and email addresses are on them. To do this, we randomly chose many comments submitted from 2013 through 2017, and we are sending this 2-question survey to ask whether you submitted the following comment:

Comment: {$COMMENTS} (first 400 characters)	*Comment information:* {$CONTACT}

Did you submit this comment?

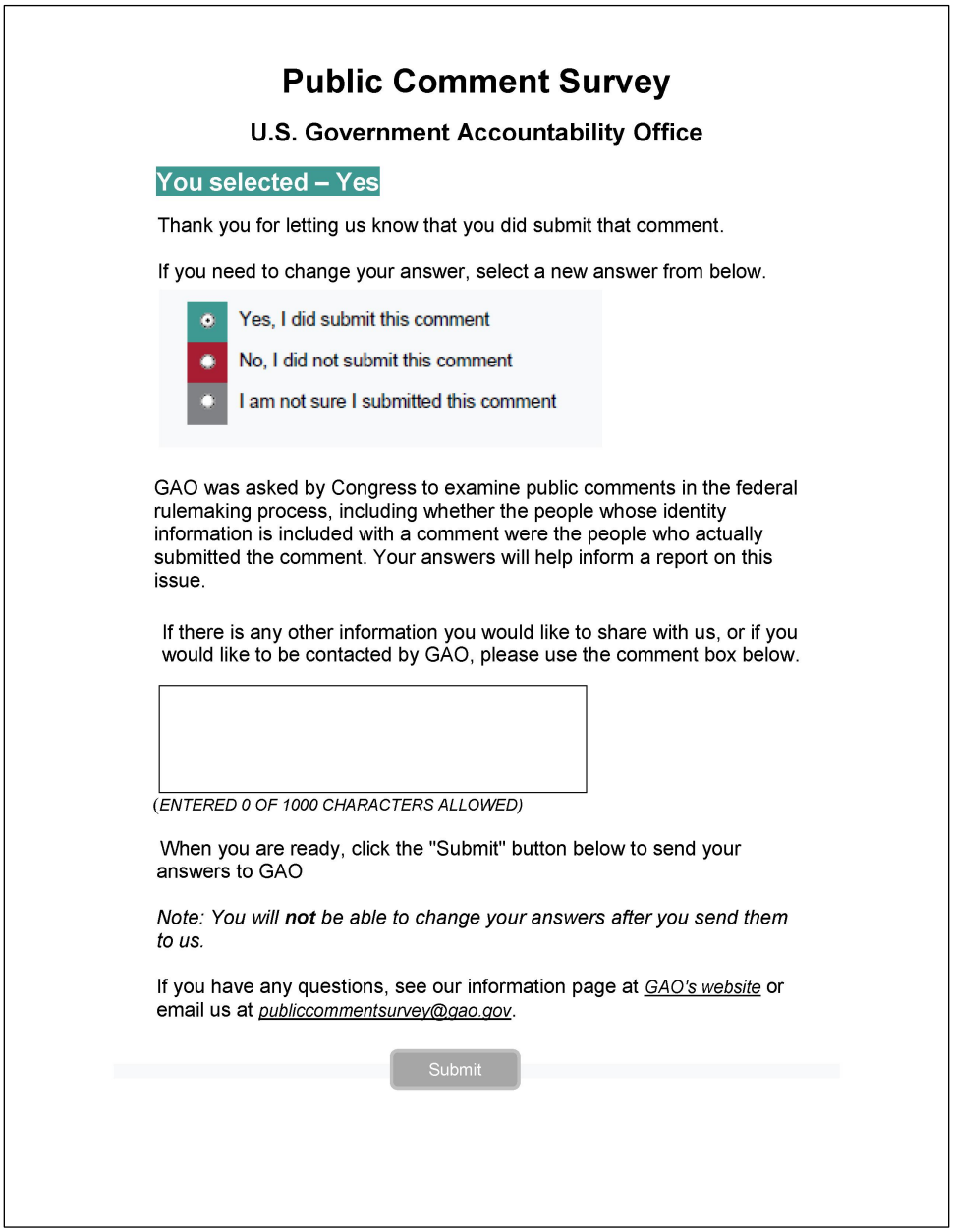
Yes | No | Not sure

Thank you for helping us inform the Congress about the public comment process.

If you have any questions about GAO or why we are asking you this question, please see our information page on GAO's website, or email us at publiccommentsurvey@gao.gov.

GAO is an independent, nonpartisan agency that works for Congress. Often called the "congressional watchdog," GAO examines how taxpayer dollars are spent and provides Congress and federal agencies with balanced, reliable information to help the government save money and work more efficiently.

1



Public Comment Survey

U.S. Government Accountability Office

You selected – Yes

Thank you for letting us know that you did submit that comment.

If you need to change your answer, select a new answer from below.

- Yes, I did submit this comment
- No, I did not submit this comment
- I am not sure I submitted this comment

GAO was asked by Congress to examine public comments in the federal rulemaking process, including whether the people whose identity information is included with a comment were the people who actually submitted the comment. Your answers will help inform a report on this issue.

If there is any other information you would like to share with us, or if you would like to be contacted by GAO, please use the comment box below.

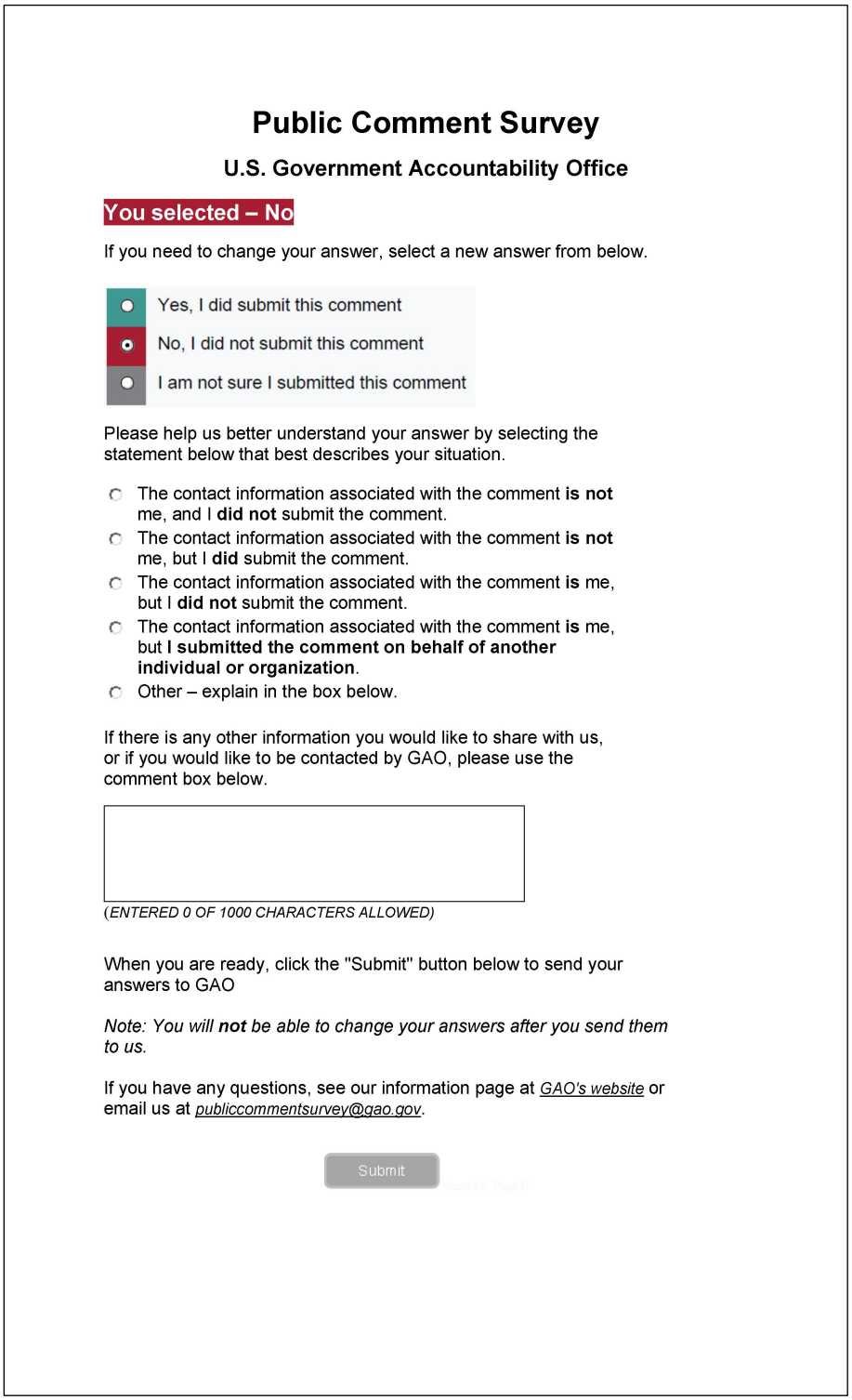
(*ENTERED 0 OF 1000 CHARACTERS ALLOWED*)

When you are ready, click the "Submit" button below to send your answers to GAO

*Note: You will **not** be able to change your answers after you send them to us.*

If you have any questions, see our information page at *GAO's website* or email us at *publiccommentsurvey@gao.gov*.

Submit



Public Comment Survey

U.S. Government Accountability Office

You selected – No

If you need to change your answer, select a new answer from below.

- ○ Yes, I did submit this comment
- ◉ No, I did not submit this comment
- ○ I am not sure I submitted this comment

Please help us better understand your answer by selecting the statement below that best describes your situation.

- ○ The contact information associated with the comment **is not** me, and I **did not** submit the comment.
- ○ The contact information associated with the comment **is not** me, but I **did** submit the comment.
- ○ The contact information associated with the comment **is** me, but I **did not** submit the comment.
- ○ The contact information associated with the comment **is** me, but **I submitted the comment on behalf of another individual or organization**.
- ○ Other – explain in the box below.

If there is any other information you would like to share with us, or if you would like to be contacted by GAO, please use the comment box below.

(ENTERED 0 OF 1000 CHARACTERS ALLOWED)

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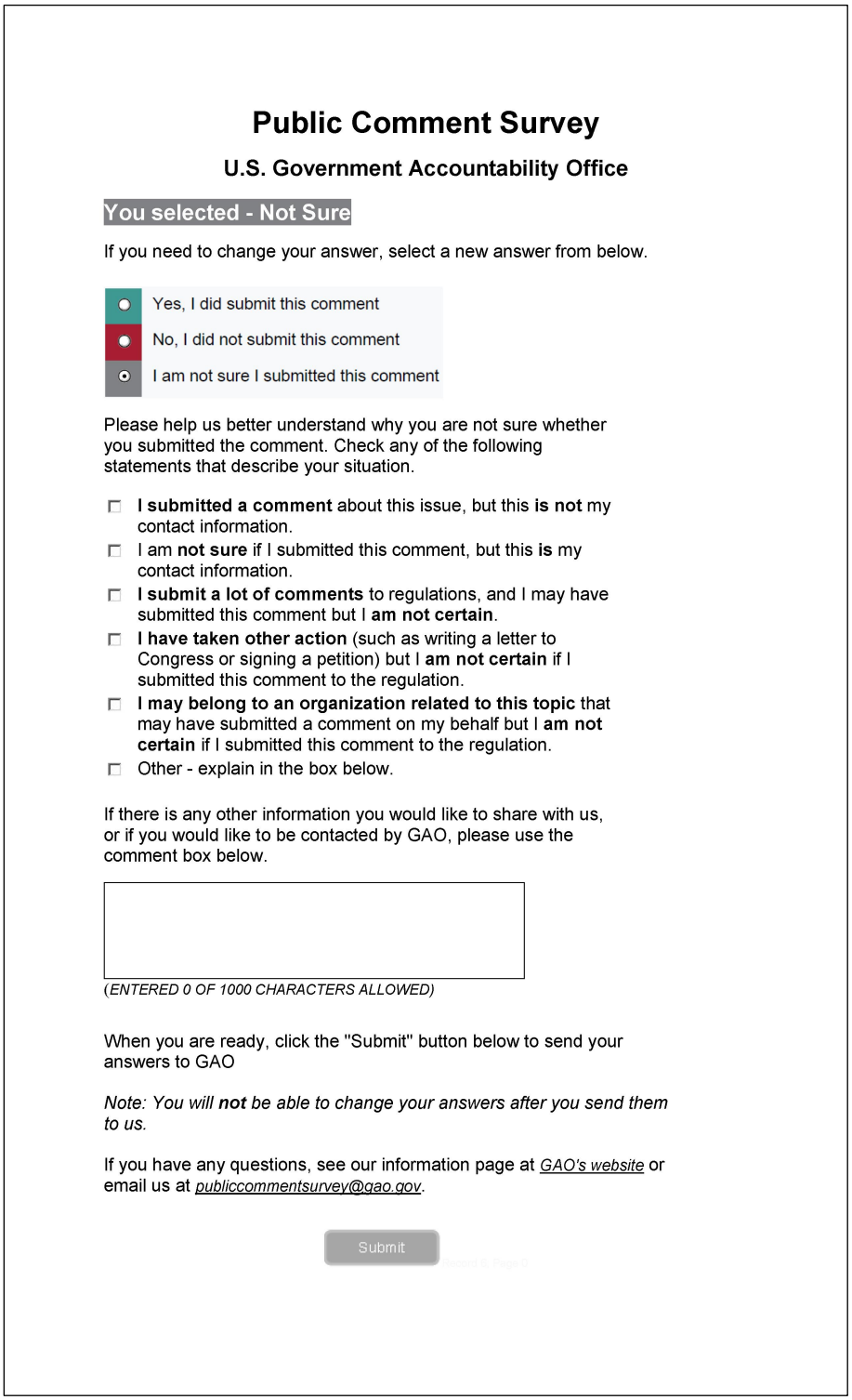
Submit



Public Comment Survey

U.S. Government Accountability Office

You selected - Not Sure

If you need to change your answer, select a new answer from below.

- ○ Yes, I did submit this comment
- ○ No, I did not submit this comment
- ◉ I am not sure I submitted this comment

Please help us better understand why you are not sure whether you submitted the comment. Check any of the following statements that describe your situation.

- ☐ **I submitted a comment** about this issue, but this **is not** my contact information.
- ☐ I am **not sure** if I submitted this comment, but this **is** my contact information.
- ☐ **I submit a lot of comments** to regulations, and I may have submitted this comment but I **am not certain**.
- ☐ **I have taken other action** (such as writing a letter to Congress or signing a petition) but I **am not certain** if I submitted this comment to the regulation.
- ☐ **I may belong to an organization related to this topic** that may have submitted a comment on my behalf but I **am not certain** if I submitted this comment to the regulation.
- ☐ Other - explain in the box below.

If there is any other information you would like to share with us, or if you would like to be contacted by GAO, please use the comment box below.

(ENTERED 0 OF 1000 CHARACTERS ALLOWED)

When you are ready, click the "Submit" button below to send your answers to GAO

*Note: You will **not** be able to change your answers after you send them to us.*

If you have any questions, see our information page at *GAO's website* or email us at *publiccommentsurvey@gao.gov*.

Submit

Text of Commenter Questionnaire

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Did you submit this comment?

Yes	No	Not sure

Thank you for helping us inform the Congress about the public comment process.
If you have any questions about GAO or why we are asking you this question, please see our information page on GAO's website, or email us at publiccommentsurvey@gao.gov.

GAO is an independent, nonpartisan agency that works for Congress. Often called the "congressional watchdog," GAO examines how taxpayer dollars are spent and provides Congress and federal agencies with balanced, reliable information to help the government save money and work more efficiently.

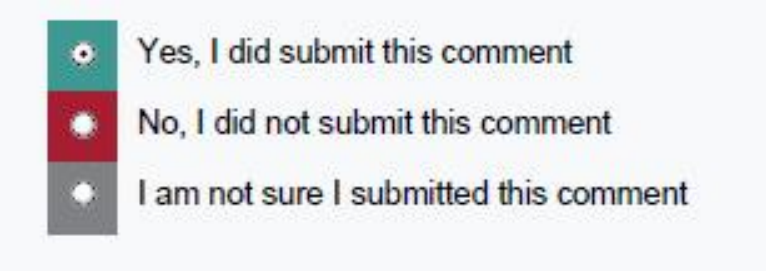
1

Public Comment Survey

U.S. Government Accountability Office **You selected – Yes**

Thank you for letting us know that you did submit that comment.

If you need to change your answer, select a new answer from below.



GAO was asked by Congress to examine public comments in the federalrulemaking process, including whether the people whose identity information is included with a comment were the people who actually submitted the comment. Your answers will help inform a report on this issue.

If there is any other information you would like to share with us, or if youwould like to be contacted by GAO, please use the comment box below.

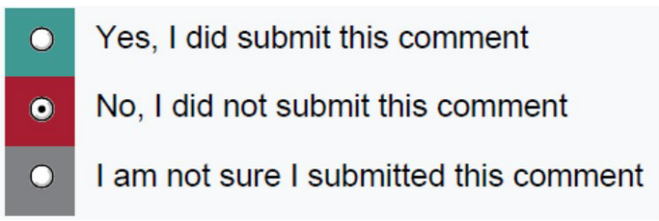
(*ENTERED 0 OF 1000 CHARACTERS ALLOWED)*
When you are ready, click the "Submit" button below to send youranswers to GAO

*Note: You will **not** be able to change your answers after you send them to us.*
If you have any questions, see our information page at *GAO's website* or email us at *publiccommentsurvey@gao.gov*.

Submit

You selected – No

If you need to change your answer, select a new answer from below.



Please help us better understand your answer by selecting the statement below that best describes your situation.

- The contact information associated with the comment **is not** me, and I **did not** submit the comment.
- The contact information associated with the comment **is not** me, but I **did** submit the comment.
- The contact information associated with the comment **is** me, but I **did not** submit the comment.
- The contact information associated with the comment **is** me, but **I submitted the comment on behalf of another individual or organization**.
- Other – explain in the box below.

If there is any other information you would like to share with us,or if you would like to be contacted by GAO, please use the comment box below.

(*ENTERED 0 OF 1000 CHARACTERS ALLOWED)*

When you are ready, click the "Submit" button below to send youranswers to GAO

*Note: You will **not** be able to change your answers after you send them to us.*

If you have any questions, see our information page at *GAO's website* or email us at *publiccommentsur*

Submit

Record 6, Page 0

You selected - Not Sure

If you need to change your answer, select a new answer from below.

Please help us better understand why you are not sure whether you submitted the comment. Check any of the following statements that describe your situation.

- ☐ **I submitted a comment** about this issue, but this **is not** my contact information.
- ☐ I am **not sure** if I submitted this comment, but this **is** my contact information.
- ☐ **I submit a lot of comments** to regulations, and I may have submitted this comment but I **am not certain**.
- ☐ **I have taken other action** (such as writing a letter to Congress or signing a petition) but I **am not certain** if I submitted this comment to the regulation.
- ☐ **I may belong to an organization related to this topic** that may have submitted a comment on my behalf but I **am not certain** if I submitted this comment to the regulation.
- ☐ Other - explain in the box below.

If there is any other information you would like to share with us,or if you would like to be contacted by GAO, please use the comment box below.

(*ENTERED 0 OF 1000 CHARACTERS ALLOWED)*

When you are ready, click the "Submit" button below to send youranswers to GAO

*Note: You will **not** be able to change your answers after you send them to us.*

If you have any questions, see our information page at *GAO's website* or email us at *publiccommentsur*

Submit

Record 6, Page 0

We conducted two rounds of pretesting of the draft questionnaire, revising it accordingly. In the first round, eight test subjects were shown facsimiles of the email and web questionnaire, populated with comment text and submission information, and instructed to assume a specific role based on a scenario—the hypothetical comment was from them, it was not, or they were not sure. We observed test subject performance of the survey tasks, and questioned them during and after the tests to assess their comprehension of our questions. In the second round of pretesting, we administered the draft questionnaire facsimiles to five actual commenters recruited from the target population, similarly observing and questioning them while they completed the questionnaire. We also presented test subjects with alternatively worded and formatted versions of the email and web questionnaire to inform our layout and other design choices.

After revising the survey materials following the pretests, we conducted a pilot test in April 2019 of the fully functional email and web survey to the presumed commenters of a sample of 700 comments drawn from across seven of the strata. Because we made further changes to the questionnaire based on the pilot, we did not include the 328 pilot responses in our estimates.

Survey administration

Before we began contacting sampled commenters, we removed all sampled comments with email addresses classified as “undeliverable” by a commercial email validation service. These comments were assigned a final outcome of nonfunctional email. We continued with survey administration to all other sampled comments, which were classified by the email validation service review as either “deliverable” or “risky.” During fieldwork, some of these email addresses were also discovered to be undeliverable. While comments with known nonfunctional emails made up approximately 17 percent of our sample (see table 5 for the percentages by selected agency), it is possible that there are additional nonfunctional emails for which we did not receive an automated reply of undeliverability from the recipient’s email server, and which are therefore indistinguishable from nonresponding commenters.

Table 5: Estimated Percentage of Comments with Email Addresses that Were Nonfunctional at 10 Selected Agencies

Agency	Estimated percentage of comments with email addresses that were nonfunctional
Bureau of Land Management	12
Consumer Financial Protection Bureau	12
Centers for Medicare & Medicaid Services	13
Employee Benefits Security Administration	6
Environmental Protection Agency	22
Federal Communications Commission	46
Food and Drug Administration	11
Fish and Wildlife Service	13
Securities and Exchange Commission	20
Wage and Hour Division	5

Source: GAO analysis of survey of commenters. | GAO-21-103181

Note: Estimates in this table have a margin of error of +/- 3 percentage points or fewer, at the 95 percent confidence level.

We emailed our questionnaire to the commenters associated with our sampled comments in waves, beginning in June 2019 and ending in November 2020. The field period for each wave of sample was 8 weeks, with up to two follow-up email contacts to nonrespondents made during the first 2 weeks. The two definitive outcomes for surveyed comments that determine response rates are shown in table 6.

Table 6: Number of Electronic Comments in the Survey Population and Sample, and Their Outcomes

			Sample outcomes		
Agency stratum	Target population	Sample	Nonfunctional Emails[a]	Usable Responses[b]	Response Rate[c]
Bureau of Land Management (BLM), nonattachments[d]	2,784	203	17	105	56.5
BLM, attachments	96,444	551	65	256	52.7
Consumer Financial Protection Bureau (CFPB), nonattachments	1,994	1,586	228	610	44.9
CFPB, attachments	112,763	558	65	136	27.6
Centers for Medicare & Medicaid Services (CMS), nonattachments	147,043	227	16	103	48.8
CMS, attachments	107,422	748	159	301	51.1
Employee Benefits Security Administration (EBSA), nonattachments	483	472	58	198	47.8

Agency stratum	Target population	Sample	Sample outcomes		
			Nonfunctional Emails[a]	Usable Responses[b]	Response Rate[c]
EBSA, attachments	266,477	1,095	73	400	39.1
Environmental Protection Agency, attachments	819,073	1080	232	298	35.1
Federal Communications Commission (FCC), nonattachments, Net Neutrality[e]	21,955,827	1,394	670	145	20.0
FCC, nonattachments, non-Net Neutrality	638,449	140	35	35	33.3
FCC, attachments, Net Neutrality	588,014	314	29	118	41.4
FCC, attachments, non-Net Neutrality	31,901	93	17	41	53.9
Food and Drug Administration (FDA), nonattachments	54,726	695	70	276	44.2
FDA, attachments	57,535	605	72	190	35.6
Fish and Wildlife Service (FWS), nonattachments	69,738	327	41	126	44.1
FWS, attachments	398,477	574	75	213	42.7
Securities and Exchange Commission (SEC), nonattachments	320,240	1,000	171	336	40.5
SEC, attachments	68,391	500	59	190	43.1
Wage and Hour Division (WHD), nonattachments	234,342	227	10	110	50.7
WHD, attachments	63,986	2,038	246	793	44.3
Total	**26,036,109**	**14,427**	**2,408**	**4,980**	**41.4**

Source: GAO analysis of agency comment and survey data. | GAO-21-103181

[a]Comments with nonfunctional emails are comprised of (a) those removed before survey administration because they were classified as undeliverable by an email validation service, and (b) those attempted during survey administration, but resulting in an automated reply as undeliverable. Because the nonfunctional email outcome is a specific form of non-confirmability of comment submission, it is cited separately. This outcome also makes comments ineligible for further survey data collection, and is not included in the response rate calculation.

[b]Usable responses are those with valid answers to at least the primary question of submission confirmation, and received within the survey administration period.

[c]The survey response rate is defined as the number of usable responses divided by the number sampled, excluding those found to have nonfunctional emails. The total response rate shown here has not been weighted to reflect the contributions of the strata in proportion to their sizes.

[d]Nonattachment comments are text-based comments. Attachment comments are comments we extracted from attachment files, standard filings (FCC) or other mass mailings (SEC).

[e]Because most comments received by FCC between 2013 and 2017 were related to the 2014 and 2017 net neutrality rulemakings, we established substrata for non-net neutrality comments to ensure collection of a sufficient number, and representation in our estimates.

We do not know the reasons for most nonresponse outcomes, which are not shown in table 6. There was no information obtained from either email validation or survey fieldwork for 94 percent of the 7,039 nonresponses in our sample. There were few nonresponding comments for which we determined, for example, that we had not succeeded in making an email contact (e.g., due to a known survey administration error), or that our survey email had been received (e.g., we received an automated out-of-office reply).

During survey fieldwork, our invitation and follow-up emails provided prospective respondents with links to more information about GAO, the engagement, and the survey. GAO staff also answered questions and provided technical support upon request. Fourteen usable responses were captured through email exchanges with commenters, instead of direct replies to the emailed questionnaire and web-based follow-up questions.

Response weighting and analysis

Each comment in our sample had a known, nonzero probability of being selected from the target population into our survey. Once each of our survey responses was multiplied by a final weight that reflected those probabilities and generalized to the target population as a whole, the aggregate of these weighted responses became our estimates of the percentages and totals that would be found in the entire target population.

Survey quality and error

Due to the practical difficulties of conducting any survey, estimates from surveys are subject to a variety of errors, not all of which can be measured. In developing, administering, and analyzing the results from the survey, we took steps to minimize the five types of errors that may affect our survey results: population coverage, sampling, measurement, nonresponse, and data processing errors.

Population coverage error may result if some comments that would have qualified for the target population were excluded from the comment data set we drew our sample from. The direction and extent of that error would depend on whether those not covered were different from those who were covered. For example, if comments that were less likely to have been submitted by their presumed commenters were more often excluded, our survey would overestimate the proportion of comments that were

submitted. We did not identify any systematic exclusion of a significant number of comments when constructing our sample frame from the comment data set.

Sampling error affects the statistical precision of our survey estimates. Because we followed a probability procedure based on random selections, our sample was only one of a large number of samples that we might have drawn. As each sample could have resulted in different estimates, we express our confidence in the precision of our particular sample's estimates as 95 percent confidence intervals around those estimates. These intervals would contain the true population values—in the absence of other, non-sampling, error—for 95 percent of the samples we could have drawn. As a result, we are 95 percent confident that the confidence intervals around each of our estimates includes the true population values. Throughout this report, the confidence intervals surrounding our estimates are no more than plus or minus 10 percentage points, unless otherwise noted. Caution should be taken when comparing estimates (of submission confirmation rates across agency strata, for example) in the presence of sampling error. If the apparent difference between two estimates is smaller than the confidence intervals around each of the two estimates, that difference may not be statistically significant in the target population.

Measurement error is the difference between reported and true values, and may arise in respondents' answers to our self-administered questionnaire due to problems of question comprehension, information recall, making judgments, and reporting answers. We undertook the questionnaire development and testing activities described above to improve our questions and reduce their contribution to these problems.

Nonresponse error can occur when a survey fails to collect any information on a sampled comment (unit nonresponse), or when respondents do not provide a usable answer to an individual question (item nonresponse). Nonresponse can lead to an insufficient number of responses to provide estimates with the desired statistical precision; this did not occur in our survey due to the sufficiently large number of comments sampled in each stratum in anticipation of low levels of response. The main risk of nonresponse to our survey is the potential for nonresponse bias. As with coverage error, the direction and extent of nonresponse bias depends on whether those comments for which we did not receive a response differed from those for which we did. If nonresponding comments were less likely to have been submitted by their presumed commenters, our survey would overestimate the

proportion of comments submitted by commenters. While we did not conduct a nonresponse bias assessment because we could not compare responding and nonresponding comments on any other available characteristic with a known relationship to comment submission, there are several plausible nonresponse scenarios that would result in unmeasured instances of comments that were not submitted by commenters. For example:

- Our survey email is received by someone who is not the presumed commenter whose other identifying information is associated with the comment, and the survey recipient does not wish to disclose this.
- Our survey email is not received by anyone (and we do not receive an automated reply of undeliverability, resulting in an outcome of nonresponse), because the email address never existed or only temporarily functioned, in this case as an intentional measure taken by the submitter to avoid disclosing the true source of the comment.

However, it is also possible that there are opposing processes that promote underestimation of comment submission, counteracting the effect of the above scenarios. For example, if earlier comment dockets were more likely to have had confirmable comments than more recent ones, and nonresponse is higher for older comments because of decreasing ability to contact respondents at older email addresses, or decreasing recall on the part of respondents, that would promote underestimation of submission. Given the 41 percent response rate to our survey, the risk of nonresponse bias may be significant. To mitigate nonresponse, we made up to two follow-up email contacts and provided information in our emails that might have addressed the concerns of prospective respondents.

Data processing error may result after survey responses are collected, during the data management, editing, coding, and analysis to produce our estimates. To limit the possibility of such errors, we checked for inconsistent responses and made edits as necessary. A second analyst verified all data processing and analysis.

Appendix III: Required and Optional Comment Form Fields on Regulations.gov by Selected Agency as of December 2018

As we found in June 2019, selected agencies use required and optional fields on comment forms to collect some pieces of identity information from commenters, consistent with the discretion afforded by the Administrative Procedure Act.[1] Since we published that June 2019 report, Regulations.gov implemented a standard comment form for all participating agencies. The comments we reviewed were collected prior to the implementation of Regulations.gov's standard comment form. Table 7 shows the required and optional fields on Regulations.gov, prior to the implementation of the standard comment form, for each of the participating agencies we reviewed.

Table 7: Required and Optional Comment Form Fields on Regulations.gov by Selected Agency as of December 2018

	Agency							
Field	**Bureau of Land Management**	**Centers for Medicare & Medicaid Services**	**Consumer Financial Protection Bureau**	**Employee Benefits Security Administration**	**Environmental Protection Agency**	**Fish and Wildlife Service**	**Food and Drug Administration**	**Wage and Hour Division**
Comment	Required	Required	Required	Required	Required	Required	Required	Required
First Name	Optional	Optional	Required	Optional	N/A	Optional	Optional	Required
Middle Name	Optional	N/A	Optional	Optional	N/A	Optional	Optional	Optional
Last Name	Optional	Optional	Required	Optional	N/A	Optional	Optional	Required
Mailing Address	Optional	N/A	Optional	Optional	N/A	Optional	N/A	Required
City	Optional	Optional	Optional	Optional	N/A	Optional	N/A	Required
State or Province	Optional	Required	Optional	Optional	N/A	Optional	N/A	Required
Zip/Postal Code	Optional	Required	Optional	Optional	N/A	Optional	Optional	Optional
Country	Optional	Required	Optional	Optional	N/A	Optional	N/A	Required

[1]GAO, *Federal Rulemaking: Selected Agencies Should Clearly Communicate Practices Associated with Identity Information in the Public Comment Process*, GAO-19-483 (Washington, D.C. June 26, 2019).

	Agency							
Field	**Bureau of Land Management**	**Centers for Medicare & Medicaid Services**	**Consumer Financial Protection Bureau**	**Employee Benefits Security Administration**	**Environmental Protection Agency**	**Fish and Wildlife Service**	**Food and Drug Administration**	**Wage and Hour Division**
Email Address	Optional	Optional	Optional	Optional	N/A	Optional	Optional	Optional
Phone Number	Optional	N/A	Optional	Optional	N/A	Optional	N/A	Optional
Fax Number	Optional	N/A	Optional	N/A	N/A	Optional	N/A	N/A
Upload Files	Optional	Optional	Optional	Optional	Optional	Optional	Optional	Optional
Submitter's Representative	Optional	N/A	Optional	N/A	Optional	Optional	Optional	N/A
Organization Name	Optional	Required	Required	Optional	Optional	Optional	Required	Optional
Government Agency Type (i.e., Federal/ State/Local)	Optional	N/A	Optional	N/A	Optional	Optional	N/A	N/A
Government Agency	Optional	N/A	Optional	N/A	Optional	Optional	N/A	N/A
Category (e.g., Academia, Consumer Group, Individual Consumer)	N/A	Optional	N/A	N/A	N/A	Optional	Required	N/A

Source: eRulemaking Program Management Office. | GAO-21-103181

Note: "N/A" indicates that a field was not made available to a commenter on the agency's electronic comment forms.

Appendix IV: Comments from the Consumer Financial Protection Bureau

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

August 27, 2021

Seto J. Bagdoyan
Director of Audits
Forensic Audits and Investigative Service
Government Accountability Office
441 G Street, NW
Washington DC, 20548

Dear Mr. Bagdoyan,

Thank you for the opportunity to review and comment on the draft report by the Government Accountability Office (GAO), titled *Federal Rulemaking: Selected Agencies Should Fully Describe Public Comment Data and Their Limitations* (GAO-21-103181). The Bureau greatly appreciates GAO's work over the course of this engagement and believes the report provides the public with valuable information about (1) identity information associated with comments submitted on federal rulemaking proceedings for select agencies; (2) the extent to which information collected during the comment process allows the source of unconfirmed comments to be determined; and (3) the challenges that exist for the public in reviewing and analyzing public comment data.

In the report, GAO makes ten recommendations, one of which is directed to the Bureau:

- The Director of CFPB should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate.

The Bureau does not object to this recommendation. As an agency that utilizes Regulations.gov, the Bureau will coordinate with the General Services Administration, which manages Regulations.gov, and the other participating agencies to develop language that more fully describes available public comment data, including any limitations, to external users of the data.

consumerfinance.gov

The Bureau looks forward to working with GAO as it monitors the Bureau's progress in implementing this recommendation.

Sincerely,

David K. Uejio

David Uejio
Acting Director

Text of Appendix IV: Comments from the Consumer Financial Protection Bureau

August 27, 2021

Seto J. Bagdoyan Director of Audits

Forensic Audits and Investigative Service Government Accountability Office

441 G Street, NW Washington DC, 20548

Dear Mr. Bagdoyan,

Thank you for the opportunity to review and comment on the draft report by the Government Accountability Office (GAO), titled Federal Rulemaking: Selected Agencies Should Fully Describe Public Comment Data and Their Limitations (GAO-21-103181). The Bureau greatly appreciates GAO's work over the course of this engagement and believes the report provides the public with valuable information about (1) identity information associated with comments submitted on federal rulemaking proceedings for select agencies; (2) the extent to which information collected during the comment process allows the source of unconfirmed comments to be determined; and (3) the challenges that exist for the public in reviewing and analyzing public comment data.

In the report, GAO makes ten recommendations, one of which is directed to the Bureau:

- The Director of CFPB should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate.

The Bureau does not object to this recommendation. As an agency that utilizes Regulations.gov, the Bureau will coordinate with the General Services Administration, which manages Regulations.gov, and the other participating agencies to develop language that more fully describes available public comment data, including any limitations, to external users of the data.

The Bureau looks forward to working with GAO as it monitors the Bureau's progress in implementing this recommendation.

Sincerely,

David Uejio Acting Director

Appendix V: Comments from the Employee Benefits Security Administration

U.S. Department of Labor

Assistant Secretary for
Employee Benefits Security Administration
Washington, DC 20210

Seto J. Bagdoyan
Director, Forensic Audits and Investigative Service
United States Government Accountability Office
Washington, DC 20548

Dear Mr. Bagdoyan,

Thank you for the opportunity to review the Government Accountability Office (GAO) draft report entitled, "Federal Rulemaking: Selected Agencies Should Fully Describe Available Public Comment Data and Their Limitations" (GAO-21-103181, Job Codes 103181 and 104250). The draft report contains one recommendation for the Employee Benefits Security Administration (EBSA):

> The Assistant Secretary of Labor for EBSA should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate. (Recommendation 5)

EBSA will work with Wage and Hour and other impacted sub-agencies to fully understand and implement the recommendation in a coordinated fashion. It is important to note, however, that EBSA's focus in any rulemaking is on the substance of the comments it receives, rather than the collection of data about submitters. The agency carefully considers commenters' observations about relevant legal, policy, economic, and other substantive considerations relevant to the rulemaking as part of the public notice and comment process. As a general proposition, regulatory analyses turn on the merits of the comments submitted, as opposed to the collection of data about commenters.

The portion of EBSA's website that contains available public comment data states that comments are generally posted without redaction to preserve the substance of the comment, but if identified, personally identifiable information (e.g., sensitive, confidential, or unique identifiers such as social security number) is redacted to protect the privacy of the commenters and other named individuals. It is very important to EBSA that the rulemaking process be as inclusive as possible, and that it not turn down potentially meritorious comments or discourage commenters from participating in the process by imposing undue conditions or restrictions, such as requiring the submission or collection of data extraneous to the merits analysis.

Thank you again for the opportunity to review your draft report and recommendations. Please do not hesitate to contact us if you have questions concerning this response or if we can be of further assistance.

Sincerely,

Ali Khawar

Ali Khawar
Acting Assistant Secretary

Text of Appendix V: Comments from the Employee Benefits Security Administration

Seto J. Bagdoyan

Director, Forensic Audits and Investigative Service United States Government Accountability Office Washington, DC 20548

Dear Mr. Bagdoyan,

Thank you for the opportunity to review the Government Accountability Office (GAO) draft report entitled, “Federal Rulemaking: Selected Agencies Should Fully Describe Available Public Comment Data and Their Limitations” (GAO-21-103181, Job Codes 103181 and 104250). The draft report contains one recommendation for the Employee Benefits Security Administration (EBSA):

The Assistant Secretary of Labor for EBSA should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate. (Recommendation 5)

EBSA will work with Wage and Hour and other impacted sub-agencies to fully understand and implement the recommendation in a coordinated fashion. It is important to note, however, that EBSA’s focus in any rulemaking is on the substance of the comments it receives, rather than the collection of data about submitters. The agency carefully considers commenters’ observations about relevant legal, policy, economic, and other substantive considerations relevant to the rulemaking as part of the public notice and comment process. As a general proposition, regulatory analyses turn on the merits of the comments submitted, as opposed to the collection of data about commenters.

The portion of EBSA’s website that contains available public comment data states that comments are generally posted without redaction to preserve the substance of the comment, but if identified, personally identifiable information (e.g., sensitive, confidential, or unique identifiers such as social security number) is redacted to protect the privacy of the commenters and other named individuals. It is very important to EBSA that the rulemaking process be as inclusive as possible, and that it not turn down potentially meritorious comments or discourage commenters from participating in the process by imposing undue conditions or restrictions, such as requiring the submission or collection of data extraneous to the merits analysis.

Thank you again for the opportunity to review your draft report and recommendations. Please do not hesitate to contact us if you have questions concerning this response or if we can be of further assistance.

Sincerely,

Ali Khawar

Acting Assistant Secretary

Appendix VI: Comments from the Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 23, 2021

OFFICE OF MISSION SUPPORT

Mr. Seto J. Bagdoyan
Director of Audits
Forensic Audits and Investigative Service
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Bagdoyan:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO's) draft report, *Federal Rulemaking: Selected Agencies Should Fully Describe Public Comment Data and Their Limitations* (GAO-21-103181). The purpose of this letter is to provide the Environmental Protection Agency's (EPA's) response to the draft report's findings, conclusions, and recommendation.

In this report, GAO examines (1) the extent to which public commenters confirmed that they submitted comments on federal rulemaking proceedings for selected agencies, (2) the extent to which information collected during the comment process allows the source of unconfirmed comments to be determined, and (3) the challenges that exist for the members of the public in reviewing and analyzing public comment data. GAO finds that while agencies may choose to collect identity information from commenters, they are not required to collect or verify this information, since it is the substance of the comment, rather than the identity of the commenter that agencies must consider as part of the rulemaking process. GAO concludes that fully describing available public comment data can help external users make informed decisions about their use of data and help ensure they do not inadvertently draw inaccurate conclusions.

The EPA agrees with the GAO's findings, conclusions, and recommendation for EPA.

GAO Recommendation:

The Administrator of EPA should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate. (Recommendation 6)

EPA Response:

EPA currently provides information to the public on the EPA website (Commenting on EPA Dockets at https://www.epa.gov/dockets/commenting-epa-dockets) about the rules, restrictions, and policies that govern the posting of public comments to Regulations.gov and the availability of public comments for in-person viewing at the EPA Docket Center's Reading Room. To address GAO's recommendation, EPA will expand upon the language currently on the website to further explain the comment data that is available to the public, including any limitations. EPA will also coordinate with the General Services Administration (GSA) in ensuring this information is made available to users of Regulations.gov.

We appreciate the opportunity to review and respond to the draft report. If you require additional information or would like to discuss further, please contact Courtney Kerwin at (202) 566-1669 or kerwin.courtney@epa.gov.

Sincerely,

Noga, Vaughn

Digitally signed by Noga, Vaughn
Date: 2021.08.25 10:05:31 -04'00'

Vaughn Noga
Chief Information Officer and
Deputy Assistant Administrator for Environmental Information

cc: EPA GAO Liaison Team
Erin Collard, OMS
Jeffrey Wells, OMS
Patrick Grimm, OMS
Courtney Kerwin, OMS

Text of Appendix VI: Comments from the Environmental Protection Agency

Mr. Seto J. Bagdoyan Director of Audits

Forensic Audits and Investigative Service

U.S. Government Accountability Office Washington, DC 20548

Dear Mr. Bagdoyan:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO's) draft report, Federal Rulemaking: Selected Agencies Should Fully Describe Public Comment Data and Their Limitations (GAO-21-103181). The purpose of this letter is to provide the Environmental Protection Agency's (EPA's) response to the draft report's findings, conclusions, and recommendation.

In this report, GAO examines (1) the extent to which public commenters confirmed that they submitted comments on federal rulemaking proceedings for selected agencies, (2) the extent to which information collected during the comment process allows the source of unconfirmed comments to be determined, and (3) the challenges that exist for the members of the public in reviewing and analyzing public comment data. GAO finds that while agencies may choose to collect identity information from commenters, they are not required to collect or verify this information, since it is the substance of the comment, rather than the identity of the commenter that agencies must consider as part of the rulemaking process. GAO concludes that fully describing available public comment data can help external users make informed decisions about their use of data and help ensure they do not inadvertently draw inaccurate conclusions.

The EPA agrees with the GAO's findings, conclusions, and recommendation for EPA.

GAO Recommendation:

The Administrator of EPA should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate. (Recommendation 6)

EPA Response:

EPA currently provides information to the public on the EPA website (Commenting on EPA Dockets at https://www.epa.gov/dockets/commenting-epa-dockets) about the rules, restrictions, and policies that govern the posting of public comments to Regulations.gov and the availability of public comments for in-person viewing at the EPA Docket Center's Reading Room. To address GAO's recommendation, EPA will expand upon the language currently on the website to further explain the comment data that is available to the public, including any limitations. EPA will also coordinate with the General Services Administration (GSA) in ensuring this information is made available to users of Regulations.gov.

We appreciate the opportunity to review and respond to the draft report. If you require additional information or would like to discuss further, please contact Courtney Kerwin at (202) 566-1669 or kerwin.courtney@epa.gov.

Sincerely,

Vaughn Noga

Chief Information Officer and

Deputy Assistant Administrator for Environmental Information

cc: EPA GAO Liaison Team Erin Collard, OMS Jeffrey Wells, OMS Patrick Grimm, OMS Courtney Kerwin, OMS

Appendix VII: Comments from the Federal Communications Commission

Federal Communications Commission
Washington, D.C. 20554

September 3, 2021

Mr. Seto J. Bagdoyan
Director, Audit Services
Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Bagdoyan:

We have reviewed GAO's draft report, "FEDERAL RULEMAKING: Selected Agencies Should Fully Describe Public Comment Data and Their Limitations."

The FCC's Electronic Comment Filing System serves several purposes, including providing an easy way for the public to comment on rulemakings; facilitating the submission of applications, petitions, and oppositions or other views in response thereto; and allowing the public to follow topics and proceedings of interest. The report recommends that "[t]he Chair of FCC should fully describe available public comment data, including what data elements mean and any limitations, to external users of the data." We agree, and we have specific plans to improve the ways that ECFS describes the information that it makes available. ECFS is currently undergoing a redevelopment. The rebuilt system will include improvements that address your recommendation:

- ECFS user help is being rewritten. It will include a section explicitly defining the data elements that are maintained in the system.
- The ECFS API user guide is being rewritten. It will give plain-English instructions on how to use the API and ensure that the data fields are clearly described. In addition, the documentation will clearly explain the limitations of the data, including that the data are self-reported by filers and not independently verified by the FCC.

Thank you for the opportunity to comment on your recommendation.

Sincerely,

Marlene H. Dortch for

Mark Stephens
Managing Director

Text of Appendix VII: Comments from the Federal Communications Commission

September 3, 2021

Mr. Seto J. Bagdoyan Director, Audit Services

Government Accountability Office 441 G Street NW

Washington, DC 20548

Dear Mr. Bagdoyan:

We have reviewed GAO's draft repot1, "FEDERAL RULEMAKING: Selected Agencies Should Fully Describe Public Comment Data and Their Limitations."

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- The ECFS API user guide is being rewritten. It will give plain-English instructions on how to use the API and ensure that the data fields are clearly described. In addition, the documentation will clearly explain the limitations of the data, including that the data are self-reported by filers and not independently verified by the FCC.

Thank you for the opportunity to comment on your recommendation.

Sincerely,

Mark Stephens Managing Director

Appendix VIII: Comments from the General Services Administration

DocuSign Envelope ID: 1625BBDE-BE40-47B7-A78F-077ECAC1CE29

GSA

The Administrator

August 30, 2021

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Dodaro:

The U.S. General Services Administration (GSA) appreciates the opportunity to review and comment on the draft report, *Federal Rulemaking: Selected Agencies Should Fully Describe Available Public Comment Data and Their Limitations* (GAO-21-103181).

GSA concurs with recommendation 10, which states, "[t]he Administrator of GSA should coordinate with participating agencies to ensure that full descriptions of available public comment data—to include any limitations—are available to external users of the Regulations.gov API." As acknowledged in the report, GSA has accomplished elements of this goal. Specifically, your report notes that the Regulations.gov API webpage lists available data elements and defines their meanings through detailed schema. The report also notes that the newest version of Regulations.gov includes a standard comment form, which limits the variability of data elements. GSA looks forward to making continued progress on this important issue.

If you have any questions or concerns, please contact me or Gianelle Rivera, Associate Administrator, Office of Congressional and Intergovernmental Affairs, at (202) 501-0563.

Sincerely,

Robin Carnahan
Administrator

cc: Seto J. Bagdoyan, Director of Audits, Forensic Audits and Investigative Service, GAO

U.S. General Services Administration
1800 F Street NW
Washington DC 20405-0002
www.gsa.gov

Text of Appendix VIII: Comments from the General Services Administration

August 30, 2021

The Honorable Gene L. Dodaro Comptroller General of the United States

U.S. Government Accountability Office Washington, DC 20548

Dear Mr. Dodaro:

The U.S. General Services Administration (GSA) appreciates the opportunity to review and comment on the draft report, Federal Rulemaking: Selected Agencies Should Fully Describe Available Public Comment Data and Their Limitations (GAO-21-103181).

GSA concurs with recommendation 10, which states, “[t]he Administrator of GSA should coordinate with participating agencies to ensure that full descriptions of available public comment data—to include any limitations—are available to external users of the Regulations.gov API.” As acknowledged in the report, GSA has accomplished elements of this goal. Specifically, your report notes that the Regulations.gov API webpage lists available data elements and defines their meanings through detailed schema. The report also notes that the newest version of Regulations.gov includes a standard comment form, which limits the variability of data elements. GSA looks forward to making continued progress on this important issue.

If you have any questions or concerns, please contact me or Gianelle Rivera, Associate Administrator, Office of Congressional and Intergovernmental Affairs, at (202) 501- 0563.

Sincerely,

Robin Carnahan Administrator

cc: Seto J. Bagdoyan, Director of Audits, Forensic Audits and Investigative Service, GAO

Appendix IX: Comments from the Wage and Hour Division

U.S. Department of Labor

Wage and Hour Division
Washington, DC 20210

September 08, 2021

Seto J. Bagdoyan
Director, Audits
Forensic Audits and Investigative Service
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. Bagdoyan:

The Wage and Hour Division (WHD) appreciates the opportunity to respond to the Government Accountability Office (GAO) Draft Report titled *Federal Rulemaking: Selected Agencies Should Fully Describe Public Comment Data and Their Limitations,* (GAO-21-103181, Job Codes 103181 and 104250).

The Draft Report provides one recommendation that WHD should undertake. We respond to the recommendation below:

Recommendation 9:

> *The Administrator of WHD should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate.*

WHD response: WHD will work with other impacted Department sub-agencies to fully understand and implement the recommendation in a coordinated manner. The Department's focus in any rulemaking is the substance of the comments received rather than the collection of data about commenters. The agency considers commenter observations and arguments related to the proposal whether they be legal, policy, economic, or other considerations.

WHD's goal in rulemaking is to be as inclusive as possible when receiving public comments related to a proposed rule. To that end, WHD endeavors to encourage comment submissions and avoid discouraging commenters from participating in the process by making it overly burdensome on the public.

Again, thank you again for the opportunity to comment on this report. If you have questions, please do not hesitate to contact us.

Sincerely,

Jessica Looman

Jessica Looman
Acting Administrator

Text of Appendix IX: Comments from the Wage and Hour Division

September 08, 2021

Seto J. Bagdoyan Director, Audits

Forensic Audits and Investigative Service

U.S. Government Accountability Office Washington, D.C. 20548

Dear Mr. Bagdoyan:

The Wage and Hour Division (WHD) appreciates the opportunity to respond to the Government Accountability Office (GAO) Draft Report titled Federal Rulemaking: Selected Agencies Should Fully Describe Public Comment Data and Their Limitations, (GAO-21-103181, Job Codes 103181 and 104250).

The Draft Report provides one recommendation that WHD should undertake. We respond to the recommendation below:

Recommendation 9:

The Administrator of WHD should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate.

WHD response: WHD will work with other impacted Department sub-agencies to fully understand and implement the recommendation in a coordinated manner. The Department's focus in any rulemaking is the substance of the comments received rather than the collection of data about commenters. The agency considers commenter observations and arguments related to the proposal whether they be legal, policy, economic, or other considerations.

WHD's goal in rulemaking is to be as inclusive as possible when receiving public comments related to a proposed rule. To that end, WHD endeavors to encourage comment submissions and avoid discouraging commenters from participating in the process by making it overly burdensome on the public.

Again, thank you again for the opportunity to comment on this report. If you have questions, please do not hesitate to contact us.

Sincerely,

Jessica Looman Acting Administrator

Appendix X: Comments from the Department of Health and Human Services

DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF THE SECRETARY

Assistant Secretary for Legislation
Washington, DC 20201

September 1, 2021

Seto J. Bagdoyan
Director of Audits
Forensic Audits and Investigative Service
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Seto J. Bagdoyan:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "***Federal Rulemaking: Selected Agencies Should Fully Describe Available Public Comment Data and Their Limitations***" (Job codes 103181 and 104250/ GAO-21-103181)

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

Jeff Hild

Jeff Hild
Acting, Assistant Secretary for Legislation
Principal Deputy Assistant Secretary for Legislation

Attach

GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED — FEDERAL RULEMAKING: SELECTED AGENCIES SHOULD FULLY DESCRIBE AVAILABLE PUBLIC COMMENT DATA AND THEIR LIMITATIONS (GAO-21-103181)

The U.S. Department of Health & Human Services (HHS) appreciates the opportunity from the Government Accountability Office (GAO) to review and comment on this draft report.

HHS is committed to maintaining public trust in the regulatory process through transparently describing the comment data that is collected and made public. The rulemaking process is governed by the Administrative Procedure Act and managed government-wide by the Office of Management and Budget. The Centers for Medicare & Medicaid Services (CMS) has internal policies regarding public posting requirements, including identity information and other information that commenters voluntarily provide, in accordance with the Administrative Procedure Act.

For example, the Administrative Procedure Act does not require commenters to provide identity information when submitting public comments. However, if identity information is provided, current CMS policy is to post it with the comment. On the CMS website, we provide information about what data elements from a comment will be shared publicly and provide a link to Regulations.gov, where the public may review and download comment data.

HHS appreciates GAO's review, and our response to the recommendation is as follows.

Recommendation 3
The Administrator of CMS should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate.

HHS Response
CMS concurs with this recommendation and will work with the General Services Administration in response to any future guidance to federal agencies regarding describing available public comment data, including any limitations, to external users of the data.

Recommendation 8
The Commissioner of FDA should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate.

HHS Response
FDA concurs with this recommendation and will work with the General Services Administration in response to any future guidance to federal agencies regarding describing available public comment data, including any limitations, to external users of the data.

Page **1** of **1**

Text of Appendix X: Comments from the Department of Health and Human Services

September 1, 2021

Seto J. Bagdoyan Director of Audits

Forensic Audits and Investigative Service

U.S. Government Accountability Office 441 G Street NW

Washington, DC 20548

Dear Seto J. Bagdoyan:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "Federal Rulemaking: Selected Agencies Should Fully Describe Available Public Comment Data and Their Limitations" (Job codes 103181 and 104250/ GAO-21-103181)

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

Jeff Hild

Acting, Assistant Secretary for Legislation Principal Deputy Assistant Secretary for Legislation

Attach

GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED — FEDERAL RULEMAKING: SELECTED AGENCIES SHOULD

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Recommendation 3

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HHS Response

CMS concurs with this recommendation and will work with the General Services Administration in response to any future guidance to federal agencies regarding describing available public comment data, including any limitations, to external users of the data.

Recommendation 8

The Commissioner of FDA should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate.

HHS Response

FDA concurs with this recommendation and will work with the General Services Administration in response to any future guidance to federal agencies regarding describing available public comment data, including any limitations, to external users of the data.

Appendix XI: Comments from the Department of the Interior

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

Seto J. Bagdoyan
Director, Audits
Forensic Audits and Investigative Service
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Director Bagdoyan,

Thank you for providing the Department of the Interior (Interior) an opportunity to review and comment on the draft Government Accountability Office (GAO) report titled, *Federal Rulemaking: Selected Agencies Should Fully Describe Public Comment Data and Their Limitations* (GAO-21-103181). We appreciate GAO's review and feedback related to the rulemaking process.

The GAO issued two recommendations to the Department as part of its overall findings to improve these processes. The report contains one recommendation each for the Bureau of Land Management (BLM), and U.S. Fish and Wildlife Service (FWS). Below is a summary of actions taken or planned to implement the recommendations.

Recommendation 2: "The Director of BLM should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate."

Response: Concur. The BLM takes seriously its legal and regulatory responsibilities to solicit and consider public input. The BLM welcomes the opportunity to work with the Interior and the General Services Administration (GSA) on enhancements to Regulations.gov and the Federal Docket Management System (FDMS). As a user of Regulations.gov and the FDMS, the BLM will work with the Interior and GSA on system changes that support agencies' ability to meet the intent of this recommendation.

The BLM has a dedicated page linked directly from the BLM's main public page that discusses in detail how to submit public comments and what information the BLM does and does not collect (Federal Register | Bureau of Land Management (https://www.blm.gov/media/federal-register)). This site is included in BLM notices and other relevant documents to encourage its use. This site is updated regularly with agency notices and rulemaking that are available for public comments. BLM will continue to encourage the public to use this site to stay informed on the rulemaking process and what is available for public comment.

1

In addition, the BLM will convene a user experience meeting to review and collect potential ideas to streamline and further enhance the site's usability.

Target Date: March 31, 2022

Responsible Official: Assistant Director, Communications

Recommendation 7: "The Director of FWS should fully describe available public comment data, including any limitations, to external users of the data. This should include coordination with GSA, as the manager of Regulations.gov, as appropriate."

Response: Concur. FWS appreciates the opportunity to respond to GAO's recommendation. We take seriously our responsibilities under the Administrative Procedure Act (5 U.S.C. 551 et seq.), the E-Government Act of 2002 (44 U.S.C. 3501 note), Executive Order 13563, and various other related statutes and Executive orders. Our goal is to conduct a meaningful, effective, and transparent rulemaking process.

In response, we reviewed the mechanisms by which we can provide information to the public regarding the data that we make available on public comments submitted on our rulemaking actions. As noted in the draft report, FWS is a participating agency in Regulations.gov, a website run by GSA through which the public can find rulemaking materials and submit comments. Our ability to provide information via Regulations.gov is limited: currently, FWS information on the website is directed toward entities who are interested in submitting a comment. However, this information would likely be of little value to external users who want to analyze the comment data presented on Regulations.gov.

We believe the best way to disseminate rulemaking comment data is via the FWS website. The main page of this website includes information on rulemaking documents and notices published in the Federal Register currently open for public comment. From that section of the main web page, interested parties can go directly to a page "How Comments Are Processed in the Fish and Wildlife Service (FWS) and How Your Personal Information is Handled."

We are updating this webpage and will incorporate information about the public comment data that is available via Regulations.gov, including any limitations on that data.

We also will pursue making this information more visible and prominent on the main FWS web page.

Target Date: May 15, 2022

Responsible Official: Assistant Director, Joint Administrative Operations

If you have any questions or need additional information, please contact the Audit Management

division of the Office of Financial Management at DOI_PFM_AM@ios.doi.gov.

Sincerely,

RACHAEL TAYLOR

Digitally signed by RACHAEL.TAYLOR
Date: 2021.09.14 08:35:08 -04'00'

Rachael S. Taylor
Principal Deputy Assistant Secretary - Policy Management and Budget

Text of Appendix XI: Comments from the Department of the Interior

Seto J. Bagdoyan Director, Audits

Forensic Audits and Investigative Service

U.S. Government Accountability Office 441 G Street, NW

Washington, DC 20548

Dear Director Bagdoyan,

Thank you for providing the Department of the Interior (Interior) an opportunity to review and comment on the draft Government Accountability Office (GAO) report titled, Federal Rulemaking: Selected Agencies Should Fully Describe Public Comment Data and Their Limitations (GAO-21-103181). We appreciate GAO's review and feedback related to the rulemaking process.

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Responsible Official: Assistant Director, Communications

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We are updating this webpage and will incorporate information about the public comment data that is available via Regulations.gov, including any limitations on that data.

We also will pursue making this information more visible and prominent on the main FWS web page.

Target Date: May 15, 2022

Responsible Official: Assistant Director, Joint Administrative Operations

If you have any questions or need additional information, please contact the Audit Management division of the Office of Financial Management at DOI_PFM_AM@ios.doi.gov.

Sincerely,

Rachael S. Taylor

Principal Deputy Assistant Secretary - Policy Management and Budget

Appendix XII: GAO Contact and Staff Acknowledgments

GAO contact

Seto J. Bagdoyan, (202) 512-6722 or bagdoyans@gao.gov

Staff Acknowledgements

In addition to contact named above, David Bruno (Assistant Director), Yue Pui Chin, Justin Fisher, Allison Gunn, James Healy, Lauren Kirkpatrick, Haley Klosky, Elizabeth Kowalewski, James Murphy, Samuel Portnow, and Carl Ramirez made key contributions to this report. Other contributors include Enyinnaya David Aja, Gretel Clarke, Dahlia Darwiche, Carrie Davidson, Colin Fallon, Roger Gildersleeve, Joyce Harvey, David Hong, Tammi Kalugdan, Danny Lee, Barbara Lewis, Maria McMullen, Madeline Messick, Joseph Santiago, Jeff Tessin, Frances Tirado, Shana Wallace, April Yeaney, and John Yee.

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

Strategic Planning and External Liaison

Stephen J. Sanford, Managing Director, spel@gao.gov, (202) 512-4707
U.S. Government Accountability Office, 441 G Street NW, Room 7814,
Washington, DC 20548

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