



COVID-19 REGULATORY CHANGES

Understanding the public sector regulatory outlook
in the wake of the historic pandemic

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About the experts

Domenic Savini, CMA, CPA

Domenic Savini is an assistant director at the Federal Accounting Standards Advisory Board (FASAB) in the area of infrastructure, addressing such issues as deferred maintenance and repairs, asset impairment, and public-private partnerships. Savini also worked for the Department of the Navy as a financial analyst and contract negotiator, and has served in prominent positions with the Department of Housing and Urban Development. Prior to joining FASAB, Savini was director of finance & administration with the Smithsonian Institution's Sackler/Freer Galleries of Art. He is a fellow with the Institute for Responsible Infrastructure Stewardship and serves on the board of the Association of Government Accountants CEAR program and The IIA's Public Sector Audit Center. His views are personal and do not represent the views of FASAB.

Mara Ash, CIA, CGAP, CGFM, CMRA

Mara Ash serves as the chief executive officer of Business & Financial Management Solutions, LLC, a client-focused management-consulting firm in Austin, Texas. She has more than 25 years of financial management and audit experience in the government sector. Ash is a federal compliance expert, with in-depth experience helping state and local agencies build federal compliance programs and processes. Her career includes finance and consulting positions serving government agencies at all levels of government — federal, state and local, as well as nonprofit organizations. She currently serves as the chairman of the IIA Public Sector Audit Committee.

Catherine Melvin, CIA, CPA, CLEA

Catherine Melvin serves as the Chief Auditor for the Texas Department of Public Safety. She has extensive experience in public sector internal auditing, including over 20 years as a public sector chief audit executive. A leader in both state government and in the internal audit community, Melvin currently serves as a vice chair of the IIA International Public Sector Guidance Committee, and also oversees the Internal Audit Leadership Development Program for Texas state agencies. Melvin has focused her career in public service, assisting organizations to achieve their goals and objectives while being accountable to the public for efficiency, transparency, economy, effectiveness, and excellence.

INTRODUCTION

The compliance environment in a pandemic

The COVID-19 pandemic not only delivered shocks to global health and economic systems, it also set off a cascade of regulatory changes that could impact internal auditors in the public sector.

Agencies from the federal to the local level are rolling out changes to current regulations in order to ease requirements on businesses and schools, allow healthcare systems to quickly ramp up treatment capacity, and keep citizens safe.

The White House is also reportedly seeking to suspend federal regulations for small businesses and possibly make widespread regulation changes — including permanently repealing some temporary rollbacks. The moves could impact environmental and labor policy, workplace safety, and health care.¹

Meanwhile, government organizations, large and small, have been tasked with managing and overseeing new federal funding designed to stimulate the economy, provide services to at-risk individuals, and encourage medical product research and manufacturing, among other things.

With the large number of government and private sector decisions and procurements happening, the likelihood for mistakes, negligence, or even fraud increases.

This knowledge brief explores some of the risks involved in the current compliance environment and offers practical advice to public sector internal auditors whose job it is to mitigate risks to the public good.

1. Jeff Stein and Robert Costa, "White House readies push to slash regulations as major part of its coronavirus economic recovery plan," The Washington Post, April 21, 2020, <https://www.washingtonpost.com/business/2020/04/21/white-house-coronavirus-regulations>.

COVID-19 SURVEY RESULTS

Impact on public sector internal auditors

Internal auditors in public administration are focused on compliance

In a recent poll by the IIA, more than 400 chief audit executives (CAEs) and directors in North America responded to questions about how their internal audit activities were responding to the rapid changes imposed by COVID-19. Among public sector internal auditors, responses varied depending on their focus.

For public administration respondents, about 13% reported increases in effort with regard to compliance and regulatory concerns (not related to financial reporting). For public sector respondents in the educational services field, about 28% of respondents reported increased effort related to compliance and regulation (see Appendix A, Exhibits 1 and 2).

In the education services industry, the challenges are clear. Education leaders are now tasked with delivering quality education to students remotely — many of them for the first time — while attempting to comply with federal laws related to testing, reporting, student privacy, school lunch programs, and the Americans with Disabilities Act.

For internal auditors in health care and social assistance (both public and private sector), the increase in effort related to nonfinancial compliance and regulatory concerns is reported at 41% (Appendix A, Exhibit 3). This is understandable because much of the procurement needs in the COVID-19 disaster are health and safety-related products and services. Based on the stimulus packages signed into law thus far, federal grant money is available to hospitals, health departments, medical laboratories, veteran centers, food banks, and organizations working with the poor and elderly.

“The sheer magnitude of compliance issues for hospitals, and especially nursing homes, will drive a lot of audit work,” said Domenic Savini, assistant director at the Federal Accounting Standards Advisory Board.

EMERGENCY WAIVERS

Many regulations are on hold due to the pandemic

Changes to existing regulations outside of federal funding

Clearly, the pandemic poses unique challenges. Due to the urgency to mobilize medical staff and researchers, procure equipment for first responders, deliver scarce goods, provide relief to citizens and shuttered businesses, and enforce social distancing on a national scale, government bodies had to move quickly to ensure both the public and private sector had the flexibility needed to respond.

As a result, the number of regulatory changes that have taken place in a short time are more in line with a wartime scenario than with any regional disaster public sector internal auditors may have experienced in the past.

Regulations related to essential services

Many of the emergency regulations being issued or laws being enacted at the federal and state level relate to professions and services that are directly impacted by the pandemic. Such professions include medical personnel, hospitals, drug manufacturers, truck drivers, ambulance services, and even funeral directors.

For instance, the Department of Health and Human Services (HHS) issued a limited waiver of some HIPAA regulations as an acknowledgment of demands placed on hospitals during the pandemic.² Similarly, the HHS Office for Civil Rights reported it will not seek penalties for noncompliance with HIPAA regulations against providers using telemedicine platforms that may not comply with the privacy rule.³ Additionally, nearly all states are temporarily allowing medical personnel licensed elsewhere in the country to practice in their states in case additional assistance is needed.

To facilitate the transportation of goods within the U.S., the Department of Transportation is waiving certain restrictions on drivers who possess a commercial learner's permit and have passed their commercial driver's license test but have not yet received it.

Many of these waivers are not tied to federal funding and are only meant to ease the delivery of essential services.

2. Department of Health and Human Services, "COVID-19 & HIPAA Bulletin: Limited Waiver of HIPAA Sanctions and Penalties During a Nationwide Public Health Emergency," news release, March 2020, <https://www.hhs.gov/sites/default/files/hipaa-and-covid-19-limited-hipaa-waiver-bulletin-508.pdf>.

3. Jessica Davis, "OCR Lifts HIPAA Penalties for Telehealth Use During COVID-19," *HealthITSecurity*, March 18, 2020, <https://healthitsecurity.com/news/ocr-lifts-hipaa-penalties-for-telehealth-use-during-covid-19>.

Regulations from complications of COVID-19

Similarly, many other regulations have been suspended due to social distancing restrictions or to lighten the burdens on businesses, citizens who have lost jobs, or government employees. On the administrative side, some states have issued extensions for professions requiring license renewals, loosened restrictions on mail-in voting, or enabled governing bodies to meet electronically.

These changes are aimed at keeping people safe and government services operating. However, some of the changes could open states up to liability, fraud, or charges of abuse. Even just creating the appearance of encouraging bad actors could be a risk for some government agencies.

“Anytime we override internal control, our risk goes up. The value-add for public sector auditors is informing management of the risks of non-compliance.”

— Mara Ash
CEO, Business & Financial
Management Solutions

Some examples of regulatory changes that may be deemed necessary in an emergency but could still raise eyebrows include Pennsylvania extending deadlines for lobbyists to file lobbying disclosure reports;⁴ New York suspending a law requiring child care providers to undergo criminal background checks;⁵ and the governors of several states easing or suspending public records laws.⁶

Additionally, in what has proven to be a controversial move, the Environmental Protection Agency reported that it “will not seek penalties for noncompliance with routine monitoring and reporting requirements, if, on a case-by-case basis, EPA agrees that such noncompliance was caused by the COVID-19 pandemic.”⁷ (There are now pending lawsuits and the EPA has issued a press release clarifying their decision).

According to some experts, there is cause for more vigilance. As law professor and anti-corruption expert Jessica Tillipman told *Foreign Policy* magazine, “anti-corruption protections [in emergency situations] get waived or ignored, oversight becomes more lax, and people take advantage of the situation.”⁸

In a relaxed regulatory environment, the importance of the quality assurance provided by internal audit is only magnified. “Auditors have to consider these regulation relaxations or waivers as part of their overall risk management strategy and risk planning,” said Savini. “So for example, if the state of Florida has more waivers and relaxes more rules than the state of New Jersey, auditors in Florida have more risk and they’re going to have to design audit procedures that are probably much different than those that will be designed in

4. “Waived and Suspended Licensing Regulations,” Pennsylvania Department of State, accessed March-April 2020, <https://www.dos.pa.gov/Pages/COVID-19-Waivers.aspx>.

5. Bill Mahoney, “Here’s every law and regulation Cuomo had suspended during coronavirus crisis,” *Politico*, March 19, 2020, <https://www.politico.com/states/new-york/albany/story/2020/03/19/every-law-and-regulation-suspended-by-cuomo-during-the-coronavirus-crisis-1268180>.

6. Joe Hernandez, “Amid the Epidemic, It Can Be Hard To Know What’s Going On Behind Closed Doors,” *NPR*, April 19, 2020, <https://www.npr.org/2020/04/19/831548200/amid-the-epidemic-it-can-be-hard-to-know-whats-going-on-behind-closed-doors>.

7. Environmental Protection Agency, “EPA Corrects the Record after Reckless Reporting on Temporary Compliance Guidance,” news release, March 30, 2020, <https://www.epa.gov/newsreleases/epa-corrects-record-after-reckless-reporting-temporary-compliance-guidance>.

8. Tammy Kupperman Thorp, “To Defeat the Coronavirus, Stop Corruption,” *Foreign Policy*, April 6, 2020, <https://foreignpolicy.com/2020/04/06/defeat-coronavirus-stop-corruption-humanitarian-crisis-disaster-response-emergency-medical-supplies/>.

New Jersey. Auditors should reassess their risk assessment models based upon this and make appropriate adjustments to their audit plans.”

According to Catherine Melvin, the chief auditor for the Texas Department of Public Safety, risk-based approaches will be critical for public sector entities faced with limitations of resources, accessibility, and mobility.

“Public sector internal auditors can assist and advise their organizations to adopt more risk-based approaches during these extraordinary times,” said Melvin. “As an example, a state agency may have decided to summarily extend certain occupational license renewal dates. However, that state agency may also, through risk assessment and data analysis, identify a subset of the population on which to perform some limited, precision monitoring in order to mitigate the increased risk. Internal auditors can advise management and their governing bodies on applicable risk-based approaches and techniques to mitigate the increased risk associated with relaxing or suspending requirements.”

In creating an audit plan, public sector auditors do need to consider that an extended hiatus for regulations and audit programs may create a backlog for their organizations, said Melvin. Moreover, auditors and their organizations could find themselves operating with a reduced workforce — both from the impact of the virus or as a result of budget cuts, as governments see revenue decline and the need for governmental assistance increase.

“Public sector internal auditors should carefully consider not only the risks associated with relaxing or suspending requirements — particularly in regulatory environments — but how their organizations will effectively manage the backlog of regulatory oversight that has been building. This will be critical, as not only will the volume of service needs be building, but the availability and extent of resources will likely be reduced to meet those needs,” said Melvin.

Audit Focus

IIA Standard 2120.A1

The internal audit activity must evaluate risk exposures relating the organization’s governance, operations, and information systems regarding the:

- **Achievement of the organization’s strategic objectives.**
- **Reliability and integrity of financial and operational programs.**
- **Effectiveness and efficiency of operations and programs.**
- **Safeguarding of assets.**
- **Compliance with laws, regulations, policies, procedures, and contracts.**

COVID-19 RECOVERY GRANTS

All federal money comes with ‘strings attached’

Grant oversight and compliance

With the passage of federal legislation aimed at fighting COVID-19 and providing assistance to citizens, businesses, governments, and health and safety organizations, many new regulations have been added to compliance checklists.

For instance, states can use federal grant money from the Families First Coronavirus Response Act for technology, systems, and staff to assist with processing and paying unemployment insurance (UI) benefits, provided they:

1. Require employers to provide notification of potential UI eligibility to laid-off workers.
2. Ensure workers have at least two ways to apply for benefits (such as online and by phone).
3. Notify applicants of their status during the process, including providing information about how to ensure successful processing.⁹

“What we right now know to be true is that accountability is going to be expected, and money has been given for [federal] oversight.”

— Domenic Savini
Assistant Director, FASAB

For states with at least a 10% increase in unemployment, additional grant money is available that requires further action on the part of the state. States are using the money to increase server capacities, add call centers, or contract with technology companies.

As with all federal assistance during emergencies or disasters, grant money allocated for the COVID-19 response comes with strings attached, said Mara Ash, who runs a financial management consulting firm for the public sector. Beyond any new requirements written into the law, grant recipients and subrecipients who are making procurements under disaster declarations must follow their own state requirements as well as existing emergency procurement requirements in the Stafford Act, the Uniform Guidance (2CFR200), and Federal Acquisition Regulation (FAR) requirements related to, for example, conflicts of interest, competition, and small and minority business contracting.¹⁰

9. United States 116th Congress, Public Law 116-127, “Families First Coronavirus Response Act,” March 18, 2020, <https://www.congress.gov/bill/116th-congress/house-bill/6201>.

10. *Public Sector Knowledge Brief: Disaster Accountability*, (Lake Mary, FL: The IIA, February 2020), <https://www.theiia.org/centers/psac/news/Pages/knowledge-brief-disaster-accountability.aspx>.

Ash encourages her clients to create a compliance matrix to track the rules and regulations across programs because audit and monitoring programs need to encompass all compliance requirements.

State and local fund recipients who neglect to comply with the regulations attached to federal funding can face negative audit findings or have their funding de-obligated or returned. More importantly, non-compliance due to overpayment or other issues may result in wasteful spending and citizens shut out of needed assistance.

“What they risk losing is funding for one more training program, for one more unemployed individual – or even 20,” said Ash. “Most of these procurements are not small procurements. So if you're talking about \$500,000, versus going through the modified emergency procurement guidelines and getting a contract for \$250,000, that's a significant amount of assets that could have been used to serve the public.”

Compliance resources for internal auditors

According to Ash, the COVID-19 disaster, though national in scope, will involve fewer risks of procurement fraud or non-compliance because there is no physical damage. However, because the disaster is so widespread, there also may be local governments receiving federal funds that have little or no experience with disaster grants. For public sector internal auditors who will have to audit their organizations' use of federal funds, there are many resources to turn to for help.

IIA Resources

The IIA offers publications specifically related to grant auditing, including

- [Disaster Accountability](#)
- [Grant Auditing in the Public Sector](#)

Best practices from the U.S. Government Accountability Office

Savini recommends the use of a U.S. Government Accountability Office (GAO) document, [Grant Implementation Experiences Offer Lessons for Accountability and Transparency](#), which offers best practices for auditing and overseeing grants based on lessons learned from the American Recovery and Reinvestment Act of 2009 (Recovery Act). Here are some examples of best practices in the report:

- During the life of the Recovery Act, some states worked across agencies to ensure compliance for preventing fraud. Massachusetts created a fraud task force that included the state Office of the Inspector General, the attorney general, and the state auditor. The group also worked with federal agencies.
- California set up “readiness reviews,” in which state auditors conducted up-front audits in programs receiving grants. For programs with known vulnerabilities, auditors could communicate risks and make a plan to do progress checks.
- The city of Denver provided more timely notification of potential issues through real-time, informal “audit alerts,” which were dispatched during an audit. By not waiting until an audit was complete to report risks, the city was able to more quickly address problems.
- Massachusetts created a website to more transparently communicate the use of federal dollars, as well as job or grant opportunities. “States can show how much money they got and where it went to, and allow citizens to access the website. If they have any questions, there might be a forum that they can type into,” explained Savini.

Other resources

- [FEMA's information page](#) for state, local, tribal, and territorial governments is an excellent resource; the Policies and Guidance section includes procurement contract exceptions that apply under exigent or emergency circumstances.
- The Department of Justice (DOJ) [Red Flags of Collusion](#) page gives auditors a simple checklist to use to detect collusion in procurement and grant awards.
- Another DOJ resource, [Preventing and Detecting Bid Rigging, Price Fixing, and Market Allocation in Post-Disaster Rebuilding Projects](#), is a more comprehensive look at preventing fraud.
- Organizations can use the Inspector General's [Audits, Inspections, and Evaluations webpage](#) as a resource to familiarize themselves with federal audits, including findings and corrective actions.
- The GAO's [Center for Audit Excellence](#) offers group-based training and technical assistance.

CONCLUSION

Keep calm and audit on

Internal auditors as the voice of reason

There's no denying that COVID-19 has caused a lot of anxiety and concern. "When people panic, that's when we start to make mistakes," points out Ash. There are plenty of mistakes to learn from: Hurricane Katrina cost the government at least \$1 billion in fraud and waste, according to the GAO. That disaster even prompted the launch of a new agency — the National Center for Disaster Fraud.

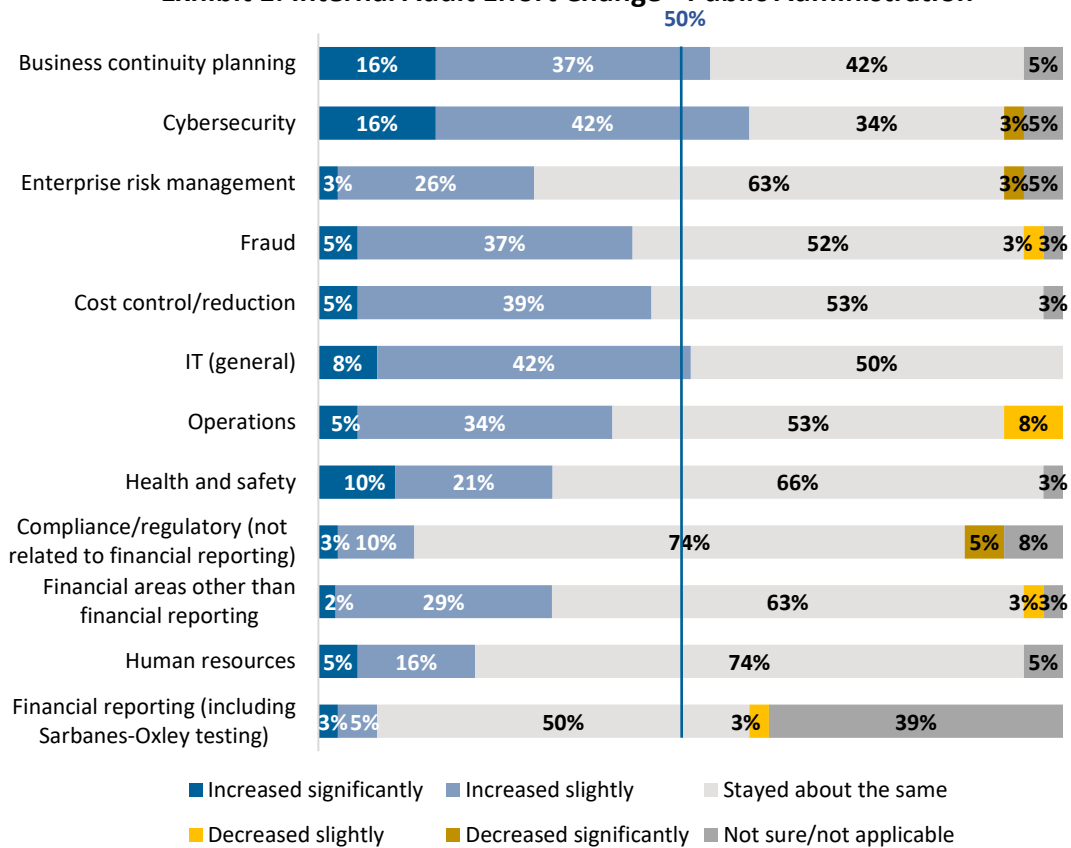
Ash reminds public sector auditors to keep calm and that they are prepared for this.

She points out that great strides have been made to put adequate controls in place. "A lot of state and local governments, and the federal government as well, have learned from these errors in the past," said Ash.

"Public sector auditors have always been the voice of reason, providing insight into how their organizations operate," Ash said. "I think the biggest thing public sector auditors can do now is inform their leadership of the risks of not following existing policy and of overriding internal controls."

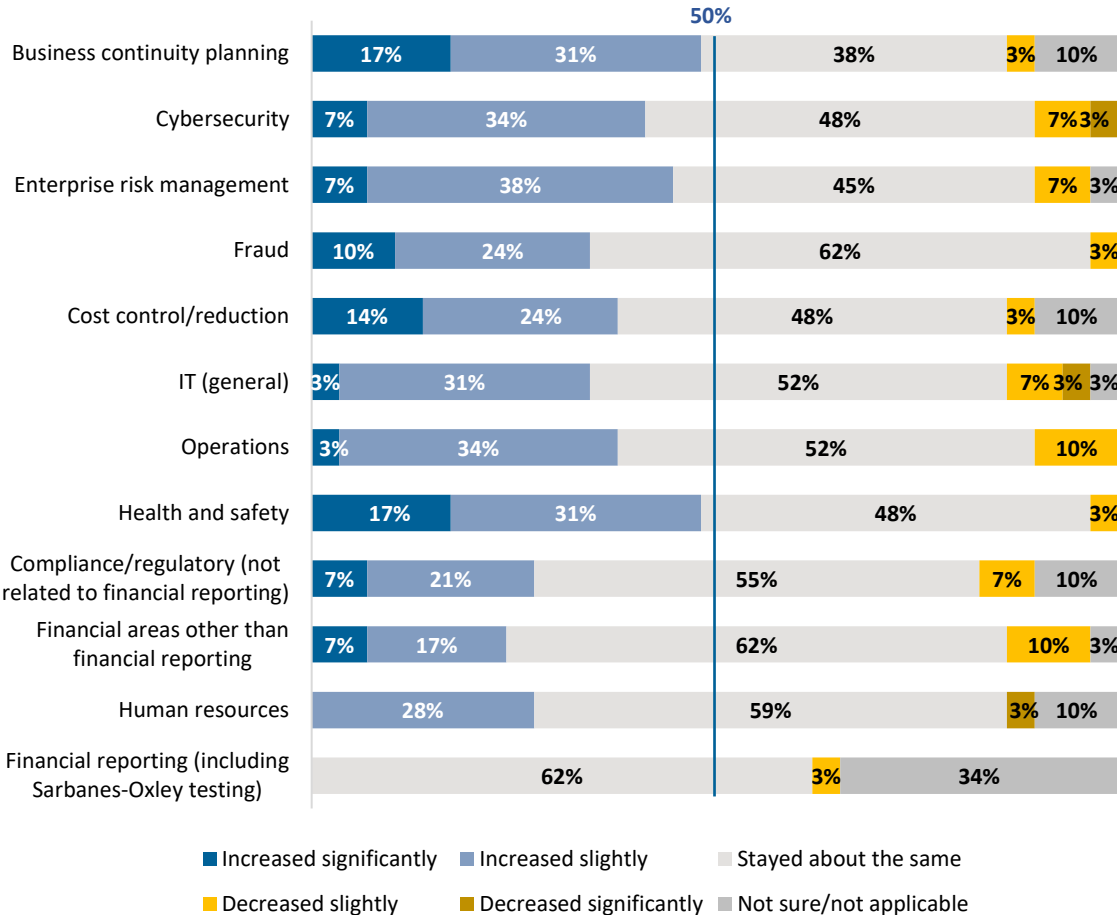
APPENDIX A

Exhibit 1: Internal Audit Effort Change - Public Administration



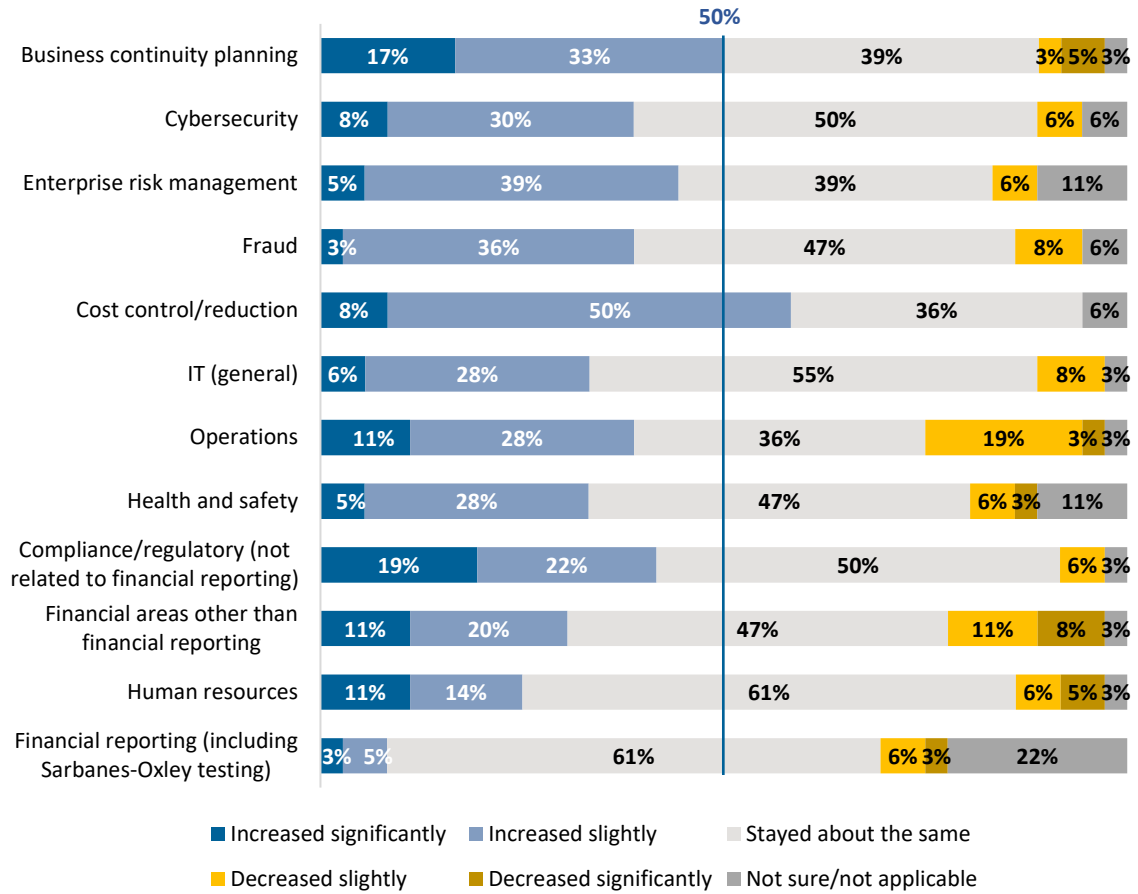
Note: IIA Quick Poll: COVID-19 Impact on Internal Audit, Q5: How has your audit effort in the following areas changed as a result of COVID-19? Survey conducted April 9-13, 2020. CAEs and directors in North America Public administration only. n = 38.

Exhibit 2: Internal Audit Effort Change-Public Sector Educational Services



Note: IIA Quick Poll: COVID-19 Impact on Internal Audit, Q5: How has your audit effort in the following areas changed as a result of COVID-19? Survey conducted April 9-13, 2020. CAEs and directors in North America. Public sector educational services only. *n* = 29.

Exhibit 3: Internal Audit Effort Change - Health Care/Social Assistance



Note: IIA Quick Poll: COVID-19 Impact on Internal Audit, Q5: How has your audit effort in the following areas changed as a result of COVID-19? Survey conducted April 9-13, 2020. CAEs and directors in North America. Health care and social assistance only. n = 36.

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The Public Sector Audit Center (PSAC) is a specialty offering of The IIA for public sector auditors. PSAC was established to provide public sector auditors with targeted high-quality professional development; networking opportunities for knowledge sharing among public sector stakeholders; and ongoing, timely, and relevant reporting on trends, benchmarking, and thought leadership in the audit profession. This report is reserved for your exclusive use as a member of the Public Sector Audit Center. For more information, visit www.theiia.org/PSAC.

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