



Highlights of [GAO-06-998T](#), a testimony before the Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, House of Representatives

Why GAO Did This Study

Federal regulation is one of the basic tools of government used to implement public policy. In 1980, the Regulatory Flexibility Act (RFA) was enacted in response to concerns about the effect that regulations can have on small entities, including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. Congress amended RFA in 1996, and the President issued Executive Order 13272 in 2002, to strengthen requirements for agencies to consider the impact of their proposed rules on small entities. However, concerns about the regulatory burden on small entities persist, prompting legislative proposals such as H.R. 682, the Regulatory Flexibility Improvements Act, which would amend RFA.

At the request of Congress, GAO has prepared many reports and testimonies reviewing the implementation of RFA and related policies. On the basis of that body of work, this testimony (1) provides an overview of the basic purpose and requirements of RFA, (2) highlights the main impediments to the Act's implementation that GAO's reports identified, and (3) suggests elements of RFA that Congress might consider amending to improve the effectiveness of the Act. GAO's prior reports and testimonies contain recommendations to improve the implementation of RFA and related regulatory process requirements.

www.gao.gov/cgi-bin/getrpt?GAO-06-998T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact J. Christopher Mihm at (202) 512-6806 or mihmj@gao.gov.

REGULATORY FLEXIBILITY ACT

Congress Should Revisit and Clarify Elements of the Act to Improve Its Effectiveness

What GAO Found

RFA established a principle that agencies should endeavor to fit their regulatory requirements to the scale of small entities. Among other things, RFA requires regulatory agencies to assess the impact of proposed rules on small entities, consider regulatory alternatives that will accomplish the agencies' objectives while minimizing the impacts on small entities, and ensure that small entities have an opportunity to participate in the rulemaking process. Further, RFA requires agencies to review existing rules within 10 years of promulgation that have or will have a significant impact on small entities to determine whether they should be continued without change or amended or rescinded to minimize their impact on small entities. RFA also requires the Chief Counsel for Advocacy of the Small Business Administration (Office of Advocacy) to monitor agencies' compliance. In response to Executive Order 13272, the Office of Advocacy published guidance in 2003 on how to comply with RFA.

In response to congressional requests, GAO reviewed agencies' implementation of RFA and related requirements on many occasions, with topics ranging from specific statutory provisions to the overall implementation of RFA. Generally, GAO found that the Act's results and effectiveness have been mixed; its reports illustrated both the promise and the problems associated with RFA. On one hand, RFA and related requirements clearly affected how federal agencies regulate and produced benefits, such as raising expectations regarding the analytical support for proposed rules. However, GAO also found that compliance with RFA varied across agencies, within agencies, and over time. A recurring finding was that uncertainties about RFA's requirements and key terms, and varying interpretations by federal agencies, limited the Act's application and effectiveness.

GAO's past work suggests that Congress might wish to review the procedures, definitions, exemptions, and other provisions of RFA to determine whether changes are needed to better achieve the purposes Congress intended. In particular, GAO's reports indicate that the full promise of RFA may never be realized until Congress revisits and clarifies elements of the Act, especially its key terms, or provides an agency or office with the clear authority and responsibility to do so. Attention should also be paid to the domino effect that an agency's initial determination of whether RFA is applicable to a rulemaking has on other statutory requirements, such as preparing compliance guides for small entities and periodically reviewing existing regulations. GAO also believes that Congress should reexamine not just RFA but how all of the various regulatory reform initiatives fit together and influence agencies' regulatory actions. Recent developments, such as the Office of Advocacy's RFA guidance, may help address some of these long-standing issues and merit continued monitoring by Congress.