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REGULATORY REFORM

Prior Reviews of Federal
Regulatory Process
Initiatives Reveal
Opportunities for
Improvements

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Highlights of [GAO-05-939T](#), a testimony before the Subcommittee on Regulatory Affairs, Committee on Government Reform, House of Representatives

Why GAO Did This Study

Federal regulation is a basic tool of government. Agencies issue thousands of rules and regulations each year to achieve goals such as ensuring that workplaces, air travel, and foods are safe; that the nation's air, water and land are not polluted; and that the appropriate amount of taxes are collected. The costs of these regulations are estimated to be in the hundreds of billions of dollars, and the benefits estimates are even higher. Over the past 25 years, a variety of congressional and presidential regulatory reform initiatives have been instituted to refine the federal regulatory process.

This testimony discusses findings from the large number of GAO reports and testimonies prepared at the request of Congress to review the implementation of regulatory reform initiatives. Specifically, GAO discusses common strengths and weaknesses of existing reform initiatives that its work has identified. GAO also addresses some general opportunities to reexamine and refine existing initiatives and the federal regulatory process to make them more effective. GAO's prior reports and testimonies contain a variety of recommendations to improve particular reform initiatives and aspects of the regulatory process.

www.gao.gov/cgi-bin/getrpt?GAO-05-939T.

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 REFORM

Prior Reviews of Federal Regulatory Process Initiatives Reveal Opportunities for Improvements

What GAO Found

GAO's evaluations of regulatory reform initiatives indicate that some of these initiatives have yielded mixed results. Among the goals of the initiatives are reducing regulatory burden, requiring more rigorous regulatory analysis, and enhancing oversight. The initiatives have been beneficial in a number of ways, but they also were often less effective than anticipated. GAO's reviews suggest at least four overall strengths or benefits associated with existing initiatives: (1) increasing the attention directed to rules and rule making, (2) increasing expectations regarding the analytical support for proposed rules, (3) encouraging and facilitating greater public participation in rule making, and (4) improving the transparency of the rule-making process. On the other hand, at least four recurring reasons help explain why reform initiatives have not been more effective: (1) limited scope and coverage of various requirements, (2) lack of clarity regarding key terms and definitions, (3) uneven implementation of the initiatives' requirements, and (4) a predominant focus on just one part of the regulatory process, agencies' development of rules.

As Congress develops its regulatory reform agenda, the lessons and opportunities identified by GAO's body of work suggest two avenues that might provide a useful starting point. The first would be to broadly revisit the procedures, definitions, exemptions, and other provisions of existing initiatives to determine whether changes are needed to better achieve their goals. As a second avenue to explore, GAO's reviews found that the regulatory process could benefit from more attention to evaluations of existing regulations, although recognizing some of the difficulties associated with carrying out such evaluations. The lessons that could be learned from retrospective reviews could help to keep the regulatory process focused on results and inform future action to meet emerging challenges.

This is a particularly timely point to be reviewing the regulatory process. The long-term fiscal imbalance facing the United States, along with other significant trends and challenges, establishes the case for change and the need to reexamine the base of the federal government and all of its existing programs, policies, functions, and activities. No single approach or reform can address all of the questions and program areas that need to be revisited. However, federal regulation is a critical tool of government, and regulatory programs play a key part in how the federal government addresses many of the country's needs. Therefore, reassessing the regulatory framework must be part of that long-term effort to transform what the federal government does and how it does it.

Madam Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss reform initiatives that have been instituted over the years to improve the federal regulatory process. Congress has often asked GAO to evaluate the effectiveness of procedures and requirements established by certain initiatives. Our work included reviews of agencies' compliance with the initiatives and provided us opportunities to examine the outcomes of various reforms. My remarks today are based on this broad body of regulatory work and some of the significant common themes and lessons that have emerged.

In brief, over the last 25 years Congresses and Presidents initiated a number of regulatory reforms for a variety of purposes, such as reducing regulatory burdens or improving the information available to decision makers and the public about proposed rules. Our reviews indicated that some of these initiatives have yielded mixed results. There have been benefits associated with the initiatives, but they were often less effective than intended. Time and again we noted how features such as the limited scope of the initiatives, unclear definitions, and broad exemptions affected the results of these reforms. Also, while many of these initiatives added more requirements at the beginning of the regulatory process, fewer of their provisions have focused on evaluating the actual benefits and costs of rules once implemented and using such information to revise existing regulations and inform future action.

For these reasons, as this subcommittee begins to develop its regulatory reform agenda, we suggest two avenues that might provide a useful starting point. First, the subcommittee might wish to broadly revisit the procedures, definitions, exemptions, and other provisions of existing initiatives to determine whether changes are needed to better achieve their goals. Second, to keep the regulatory process focused on results meeting emerging challenges, we found that the process could benefit from more attention on evaluations of existing regulations and the lessons that could be learned from such retrospective reviews. This is a particularly timely point to reexamine the regulatory process because the long-term fiscal imbalance facing the United States, along with other significant trends and challenges, establishes the case for change and the need to reexamine the base of the federal government and all of its existing programs, policies,

functions, and activities.¹ Reassessing the regulatory framework must be part of that discussion.

Regulatory Reform Initiatives Reveal Some Common Strengths and Weaknesses

Federal regulation is a basic tool of government. Agencies issue thousands of rules and regulations each year to implement statutes enacted by Congress. The public policy goals and benefits of regulations include, among other things, ensuring that workplaces, air travel, foods, and drugs are safe; that the nation's air, water and land are not polluted; and that the appropriate amount of taxes is collected. The costs of these regulations are estimated to be in the hundreds of billions of dollars, and the benefits estimates are even higher.² Given the size and impact of federal regulation, it is no surprise that Congresses and Presidents have taken a number of actions to refine and reform the regulatory process within the past 25 years.³ One goal of such initiatives has been to reduce regulatory burdens on affected parties, but other purposes have also played a part. Among these are efforts to require more rigorous analyses of proposed rules and thus provide better information to decision makers, to enhance oversight of rule making by Congress and the President, and to promote greater transparency and participation in the process.

Over the last decade, at the request of Congress, GAO has released over 60 reports and testimonies reviewing the implementation of various regulatory reform initiatives.⁴ Some initiatives, such as the Paperwork Reduction Act (PRA), Regulatory Flexibility Act (RFA), Unfunded Mandates Reform Act (UMRA), and Executive Order 12866 on Regulatory

¹See GAO, *21st Century Challenges: Reexamining the Base of the Federal Government*, GAO-05-325SP (Washington, D.C.: Feb. 2005), and *21st Century Challenges: Transforming Government to Meet Current and Emerging Challenges*, GAO-05-830T (Washington, D.C.: July 13, 2005).

²In terms of quantified and monetized annual benefits and costs, the Office of Management and Budget reported that the estimated annual benefits of major federal regulations it reviewed from October 1994 through September 2004 range from \$68.1 billion to \$259.6 billion, while estimated annual costs range from \$34.8 billion to \$39.4 billion. See Office of Management and Budget, *Draft 2005 Report to Congress on the Costs and Benefits of Federal Regulations* (Washington, D.C.: Mar. 9, 2005).

³See app. I for summary descriptions of major regulatory reform initiatives implemented since 1980.

⁴Attached to this statement are the highlights pages from some of those reports and testimonies.

Planning and Review, have undergone repeated scrutiny. While our reviews identified specific strengths and weaknesses of individual initiatives, it may be more worthwhile to focus on crosscutting strengths and weaknesses. The common strengths we identified largely mirror the general purposes of various reform initiatives. The common weaknesses reflect issues associated with both the design and implementation of the initiatives.

Initiatives Increase Attention on Proposed Rules and Raise Expectations of the Rule-Making Process

Our reviews suggest at least four overall strengths or benefits that have been associated with existing regulatory reform initiatives: (1) increasing the attention directed to rules and rule making, (2) increasing expectations regarding the analytical support for proposed rules, (3) encouraging and facilitating greater public participation in rule making, and (4) improving the transparency of the rule-making process.

First, the simple fact that such initiatives bring added attention to rules and the rule-making process is an important benefit. As we have pointed out in prior reports, oversight of agencies' rule making can result in useful changes to rules.⁵ Furthermore, awareness of this added scrutiny may provide an important indirect effect. For example, in a previous GAO review, Department of Transportation officials told us that they will not even propose certain regulatory provisions because they know that the Office of Management and Budget (OMB), which reviews significant agency draft rules under Executive Order 12866, will not find them acceptable.⁶ Similarly, there is evidence that the focus placed on potential mandates under UMRA may have helped to discourage or limit the costs of federal mandates.⁷

Second, several of the reform initiatives have increased the analytical requirements and expectations in the regulatory process. These initiatives have raised the bar for agencies regarding the information and analysis

⁵See GAO, *Rulemaking: OMB's Role in Reviews of Agencies' Draft Rules and the Transparency of Those Reviews*, [GAO-03-929](#) (Sept. 22, 2003), and *Regulatory Reform: Procedural and Analytical Requirements in Federal Rulemaking*, [GAO/T-GGD/OGC-00-157](#) (Washington, D.C.: June 8, 2000).

⁶GAO, *Regulatory Reform: Implementation of the Regulatory Review Executive Order*, [GAO/T-GGD-96-185](#) (Washington, D.C.: Sept. 25, 1996).

⁷GAO, *Unfunded Mandates: Analysis of Reform Act Coverage*, [GAO-04-637](#) (Washington, D.C.: May 12, 2004).

needed to support policy decisions underlying regulations. Simply put, the initiatives call for more analysis of the effects—both benefits and costs—of proposed regulations before they are implemented. Whether imposed by statute or executive order, these initiatives seek to answer a basic question, “What are the consequences of this rule?” Closely related are other requirements that encourage agencies to identify and consider alternatives when developing regulations. Executive Order 12866, for example, asks agencies to first identify and assess available alternatives to direct regulation. Initiatives such as RFA and UMRA ask agencies to identify regulatory alternatives that will be less burdensome to regulated parties.

Third, some of the reform initiatives have encouraged and facilitated greater public participation and consultation in rule making. Initiatives such as the E-Government Act and the Government Paperwork Elimination Act encourage agencies to allow the public to communicate with them by electronic means. Other initiatives require additional consultation by agencies with the parties that might be affected by rules under development. These initiatives ask that agencies seek input earlier in the process, rather than waiting for the public to comment on proposals published in the *Federal Register*.

A final shared strength of many of these initiatives, and one closely connected to the three previous items, is that they help to improve the transparency of the regulatory process. In prior work, we have cited transparency as a regulatory best practice.⁸ By providing more information about potential effects and alternatives, requiring more documentation and justification of agencies’ decisions, and facilitating public access to and queries about such information, regulatory reform initiatives can help make the process more open. We recommended that more could be done to increase transparency, and we have also highlighted the value of transparency when agencies had particularly clear and complete documentation supporting their rule making. As the Administrator of OMB’s Office of Information and Regulatory Affairs (OIRA) pointed out, openness can help to “transform the public debate about regulation to one of substance ... rather than process.”⁹

⁸GAO, *Certification Requirements: New Guidance Should Encourage Transparency in Agency Decisionmaking*, GAO/GGD-99-170 (Washington, D.C.: Sept. 24, 1999).

⁹See GAO-03-929.

Some Recurring Weaknesses Might Explain Why Reform Initiatives Have Not Been More Effective

Despite these strengths, the overall results and effectiveness of regulatory reform initiatives have often been mixed. This may be particularly true when results of the initiatives are compared to the goals and purposes originally established for them. For example, despite the goals set for the reduction of paperwork burdens under PRA, we have repeatedly testified about the growth in burden hours imposed by federal information collections.¹⁰ We similarly reported that initiatives such as UMRA, the executive order on federalism, and requirements imposed under Section 610 of RFA for reviews of existing rules, have had little impact on agencies' rule making. Our reviews have identified at least four general reasons that might explain why reform initiatives have not been more effective: (1) the limited scope and coverage of various requirements, (2) lack of clarity regarding key terms and definitions, (3) uneven implementation of the initiatives' requirements, and (4) a predominant focus on just one part of the regulatory process, agencies' development of rules.

First, we have pointed out significant limits in the scope and coverage of certain reform initiatives. UMRA provides one example of the effect of definitional limitations, exceptions, and thresholds on restricting an initiative's coverage. As we noted in a report last year, part of the reason for the relatively small number of rules identified as containing mandates under UMRA could be traced to 14 different restrictions on the identification of federal mandates under the Act. Furthermore, our analysis of all 122 major or economically significant rules (generally, rules with an impact of \$100 million or more) published in 2001 and 2002 also showed that more than one of these restrictions applied to 72 percent of the 65 rules that were not identified as containing federal mandates under UMRA but nonetheless appeared to result in significant financial effects on nonfederal parties.¹¹

UMRA, along with RFA, also illustrates the potential domino effect of building reform requirements on other procedural requirements. Both acts only apply to rules for which an agency publishes a notice of proposed rule making. However, agencies can publish final regulatory actions without notices of proposed rule making using either good cause, categorical, or

¹⁰However, the total paperwork burden shrank slightly in fiscal year 2004, according to OMB estimates. See GAO, *Paperwork Reduction Act: Burden Reduction May Require a New Approach*, [GAO-05-778T](#) (Washington, D.C.: June 14, 2005).

¹¹[GAO-04-637](#).

statute-specific exceptions to the Administrative Procedure Act's notice and comment requirements.¹² In one of our prior reports, we estimated that about half of all final regulatory actions published by agencies were issued without going through the proposed rule stage.¹³ Although many final rules without proposed rules were minor actions, in both that analysis and our recent UMRA review there were *major* rules that did not have notices of proposed rule making.¹⁴

Another recurring message in our reports has been the effect of unclear terms and definitions that affect the applicability of requirements. Combined with the discretion given rule-making agencies to interpret the requirements in reform initiatives, it is not surprising that we have observed uneven implementation across agencies. In particular, we have often cited the need to clarify key terms in the Regulatory Flexibility Act.¹⁵ RFA requires analyses and other actions to help address concerns about the impact of regulations on small entities, but the requirements do not apply if the agency head certifies that the agency's rule will not have a "significant economic impact on a substantial number of small entities." However, the Act neither defines this key phrase nor places clear responsibility on any party to define it consistently across government. As a result, we found that agencies had different interpretations of RFA's requirements. We said in a series of reports that, if Congress wanted to strengthen the implementation of RFA, it should consider amending the Act to define the key phrases or provide some other entity with clearer authority and responsibility to interpret RFA's provisions. To date, Congress has not acted on our recommendations. Again, there is a domino

¹²The basic process by which federal agencies develop and issue regulations is spelled out in the Administrative Procedure Act. 5 U.S.C. § 553.

¹³GAO, *Federal Rulemaking: Agencies Often Published Final Actions Without Proposed Rules*, [GAO/GGD-98-126](#) (Washington, D.C.: Aug. 31, 1998).

¹⁴For the analysis in [GAO/GGD-98-126](#), 11 of 61 final major rules did not have proposed rules. For the analysis in [GAO-04-637](#), 28 of the subset of 65 major rules mentioned above did not have proposed rules.

¹⁵See GAO, *Regulatory Flexibility Act: Clarification of Key Terms Still Needed*, [GAO-02-491T](#) (Washington, D.C.: Mar. 6, 2002); *Regulatory Flexibility Act: Key Terms Still Need to Be Clarified*, [GAO-01-669T](#) (Washington, D.C.: Apr. 24, 2001); *Regulatory Flexibility Act: Implementation in EPA Program Offices and Proposed Lead Rule*, [GAO/GGD-00-193](#) (Washington, D.C.: Sept. 20, 2000); *Regulatory Flexibility Act: Agencies' Interpretations of Review Requirements Vary*, [GAO/GGD-99-55](#) (Washington, D.C.: Apr. 2, 1999); and *Regulatory Flexibility Act: Status of Agencies' Compliance*, [GAO/GGD-94-105](#) (Washington, D.C.: Apr. 27, 1994).

effect associated with this uncertainty, because other reform initiatives, such as the requirement for agencies to review existing rules under Section 610 of RFA and a requirement to provide compliance assistance guides to regulated entities, only apply if an agency has determined the rule will have a significant economic impact on a substantial number of small entities.

Sometimes, though, it might not be uncertainty over the provisions of an initiative that help to limit its effectiveness, but rather an agency's implementation of the requirements. For example, as noted in our recent report on the Paperwork Reduction Act, one of the provisions aimed at helping to achieve the goals of minimizing burden while maximizing utility is a requirement for chief information officers (CIO) to review and certify information collections.¹⁶ However, our analysis of case studies showed that CIOs provided these certifications despite often missing or inadequate support from the program offices sponsoring the collections. We recommended that OMB clarify the kinds of support it asks agency CIOs to provide for certifications and that heads of certain agencies direct responsible CIOs to strengthen agency support for CIO certifications, including with regard to the necessity of collection, burden reduction efforts, and plans for the use of information collected.

Our reports over the years have also highlighted issues regarding agencies' implementation of analytical requirements, such as the economic analyses that support regulations. Although the economic performance of some federal actions is assessed prospectively, few federal actions are monitored for their economic performance retrospectively. In addition, our reviews have found that economic assessments that analyze regulations prospectively are often incomplete and inconsistent with general economic principles.¹⁷ Moreover, the assessments are not always useful for comparisons across the government, because they are often based on different assumptions for the same key economic variables. In our recent report on UMRA, we noted that parties from various sectors expressed concerns about the accuracy and completeness of agencies' cost estimates, and some also emphasized that more needed to be done to address the

¹⁶GAO, *Paperwork Reduction Act: New Approach May Be Needed to Reduce Government Burden on Public*, [GAO-05-424](#) (Washington, D.C.: May 20, 2005).

¹⁷See GAO, *Regulatory Reform: Agencies Could Improve Development, Documentation, and Clarity of Regulatory Economic Analyses*, [GAO/RCED-98-142](#) (Washington, D.C.: May 26, 1998), and *Clean Air Act: Observations on EPA's Cost-Benefit Analysis of Its Mercury Control Options*, [GAO-05-252](#) (Washington, D.C.: Feb. 28, 2005).

benefits side of the equation.¹⁸ Our reviews have found that not all benefits are quantified and monetized by agencies, partly because of the difficulty in estimation.

Finally, although not an explicit finding in any of our reports, it is clear when stepping back to look at the big picture presented by the set of reform initiatives and our body of regulatory work that these initiatives primarily target one particular phase of the regulatory process, agencies' development of rules. While rule making is clearly an important point in the process when the specific substance and impact of regulations are most open to public debate, other phases also help determine the effectiveness of regulation. Few of the reform initiatives contain major requirements or processes that address those other phases in the life cycle of regulations—from the underlying statutory authorizations, through effective implementation and monitoring of compliance with regulatory provisions, to evaluation and revision of existing rules. For example, only UMRA explicitly addresses the potential effect of legislative proposals in creating mandates that would ultimately be implemented through regulations, and that element of UMRA has generally been viewed as among its most effective elements. We have reported that agencies sometimes have little rule-making discretion, so in some cases concerns raised about burdensome regulations are traceable to the statutes underlying the regulations, rather than a failure of an agency to comply with rule-making requirements.¹⁹ With regard to other phases in the regulatory process, RFA is unique among statutory requirements in having a provision (Section 610) for reviews of existing rules, although it is limited to rules with significant effects on small entities. Executive Order 12866 also includes some provisions to encourage agencies to review and revise existing rules. It is not clear, however, that either the Section 610 or the executive order look back provisions have been consistently and effectively implemented.²⁰

¹⁸GAO, *Unfunded Mandates: Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement*, [GAO-05-454](#) (Washington, D.C.: Mar. 31, 2005).

¹⁹GAO, *Regulatory Burden: Some Agencies' Claims Regarding Lack of Rulemaking Discretion Have Merit*, [GAO/GGD-99-20](#) (Washington, D.C.: Jan. 8, 1999).

²⁰See also, GAO, *Regulatory Reform: Agencies' Efforts to Eliminate and Revise Rules Yield Mixed Results*, [GAO/GGD-98-3](#) (Washington, D.C.: Oct. 2, 1997).

Opportunities Exist to Refine Existing Reform Initiatives and Explore New Ways to Transform the Regulatory Process

As this subcommittee begins to develop its regulatory reform agenda, our body of work on regulatory issues, and also on results-oriented government management, suggests two general avenues of effort you may want to consider as useful starting points. One avenue is to revisit the procedures, definitions, exemptions, and other provisions of existing initiatives to determine whether changes might be needed to better achieve their goals. Second, the subcommittee may wish to explore options to more effectively and productively evaluate existing regulations and the results they have generated. Not only could such retrospective evaluations help to inform Congress and other policymakers about ways to improve the design of regulations and regulatory programs, but they could play a part in the overall reexamination of the base of the federal government that we have recommended in our recent work on addressing 21st century challenges.

With respect to the first avenue, my testimony to this point indicates that there are ample opportunities to revisit and refine existing regulatory reform initiatives. Although progress has been made to implement recommendations and matters for consideration we have raised in our prior reports, there are still unresolved issues. In particular, Congress may want to consider whether some provisions of existing statutory initiatives need to be amended to make those initiatives more effective. We still believe, for example, that Congress should clarify key terms and definitions in RFA or provide another entity with the authority and responsibility to do so.

We also believe there is some value to taking a broader look at how all of the pieces of existing initiatives have, or have not, contributed to achieving the purposes intended. For example, we suggested in our recent review of PRA that a new approach might be required to address burden reduction. As illustrated by our work on lessons learned about UMRA in the 10 years since it was enacted, such reviews can reveal opportunities and options for both reinforcing the strengths and addressing the weaknesses that have emerged in practice.²¹ The options can take a number of different directions. For example, in our work on UMRA, concerns about the scope of coverage were most frequently raised by the many knowledgeable parties we consulted, but issues and options were also identified regarding enforcement, consultation, and the analytic framework, among other topics. In undertaking reviews of existing initiatives, it will be important to

²¹[GAO-05-454](#).

also revisit the reasons why particular limitations and exceptions were included in the initiatives to begin with. As pointed out in the UMRA work, this probably needs to be an inclusive effort to be successful, involving all affected parties in the debate to find common ground if changes are to be accepted.

The second broad avenue I would suggest the subcommittee consider in its reform agenda would be to explore using retrospective evaluations of existing regulations. Such evaluations could help to keep the regulatory process focused on results and identify ways to better meet emerging challenges. Among the potential benefits of more retrospective analysis of federal regulations are that it could enable policymakers to better gauge actual benefits and costs and whether regulations are achieving their desired goals, bring additional accountability to the regulatory process, identify opportunities to revise existing regulations, and provide information that could lead to better decisions regarding future regulations.

In our work this year on both UMRA and economic performance measures, we clearly heard from the experts we consulted that they believe more retrospective analysis is needed and, further, that there are ways to improve the quality and credibility of the analyses that are done. In the UMRA work, parties had particularly strong views about the need for better evaluation and research of federal mandates, including those imposed by regulations. The most frequently suggested option to address this issue was to do more postimplementation evaluation of existing mandates or “look backs” at their effectiveness. As one of the parties pointed out, retrospective evaluation of regulations is useful because rules can change people’s behavior in ways that cannot be predicted prior to implementation. In our recent workshop where we obtained the views of experts about the use of economic performance measures, such as a comparison of benefits and costs (net benefits) and cost-effectiveness, participants identified several gaps in the application of these measures to analyze federal regulations and programs.²² For example, while some agencies have done retrospective economic performance assessments, the participants said that in general federal agencies often do not assess the performance of regulations or existing programs retrospectively, even though this information could be useful in managing programs. However,

²²GAO, *Economic Performance: Highlights of a Workshop on Economic Performance Measures*, GAO-05-796SP (Washington, D.C.: July 18, 2005).

there are also challenges to effectively implementing retrospective evaluations. For example, we previously identified some of the difficulties regulatory agencies face in demonstrating the results of their work, such as identifying and collecting the data needed to demonstrate results, the diverse and complex factors that affect agencies' results (for example, the need to achieve results through the actions of third parties), and the long time period required to see results in some areas of federal regulation.²³ There is also a potential balance concern because, as I noted earlier, it may be more difficult to quantify the benefits of regulations than it is to quantify the costs.

Finally, I want to emphasize that this is a particularly timely point to be reviewing the regulatory process because of the long-term fiscal imbalance facing the United States, along with other significant trends and challenges. The 21st century challenges that we have been highlighting this year establish the case for change and the need to reexamine the base of the federal government and all of its existing programs, policies, functions, and activities. We recognize that a successful reexamination of the base of the federal government will entail multiple approaches over a period of years. No single approach or reform can address all of the questions and program areas that need to be revisited. However, federal regulation is a critical tool of government, and regulatory programs play a key part in how the federal government addresses many of the country's needs. Asking the questions necessary to begin reexamining the federal regulatory process is an important first step in the long-term effort to transform what the federal government does and how it does it.

Madam Chairman, this concludes my prepared statement. Once again, I appreciate the opportunity to testify on these important issues. I would be pleased to address any questions you or other members of the subcommittee might have at this time.

If additional information is needed regarding this testimony, please contact J. Christopher Mihm, Managing Director, Strategic Issues, at (202) 512-6806 or mihmj@gao.gov.

²³GAO, *Managing for Results: Regulatory Agencies Identified Significant Barriers to Focusing on Results*, GAO/GGD-97-83 (Washington, D.C.: June 24, 1997).

Summary of Regulatory Reform Initiatives Implemented since 1980

Congresses and Presidents have taken a number of actions to refine and reform the regulatory process within the past 25 years. The following paragraphs summarize the general purpose, applicability, and requirements imposed by some of those regulatory reform initiatives.

Paperwork Reduction Act (PRA)

PRA¹ was originally enacted in 1980, then amended in 1986 and 1995.² PRA requires agencies to justify any collection of information from the public in order to minimize the paperwork burden they impose and to maximize the practical utility of the information collected.³ The Act applies to independent and nonindependent regulatory agencies. Under PRA, agencies are required to submit all proposed information collections to the Office of Management and Budget (OMB) for approval. In their submissions, agencies must establish the need and intended use of the information, estimate the burden that the collection will impose on respondents, and show that the collection is the least burdensome way to gather the information.

PRA also established the Office of Information and Regulatory Affairs (OIRA) within OMB to provide central agency leadership and oversight of government efforts to reduce unnecessary paperwork and improve the management of information resources. Subsequent reform initiatives, including amendments of PRA, have added responsibilities for OIRA, such as making the office responsible for overseeing and reporting on agencies' compliance with new regulatory requirements. PRA of 1995, for example, included a requirement that OIRA, in consultation with agency heads, set annual governmentwide goals for the reduction of information collection burdens.

¹44 U.S.C. §§ 3501-3520.

²PRA was originally enacted into law in 1980, Pub. L. No. 96-511, 94 Stat. 2812 (Dec. 11, 1980). It was reauthorized with minor amendments in 1986, Pub. L. No. 99-591, 100 Stat. 3341 (Oct. 30, 1986) and was reauthorized a second time with more significant changes in 1995, Pub. L. No. 104-13, 109 Stat. 163 (May 22, 1995).

³PRA generally defines a "collection of information" as the obtaining or disclosure of facts or opinions by or for an agency from 10 or more nonfederal persons. 44 U.S.C. § 3502(3). Many information collections, recordkeeping requirements, and third-party disclosures are contained in or are authorized by regulations as monitoring or enforcement tools, while others appear in separate written questionnaires.

Regulatory Flexibility Act of 1980 (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)

RFA⁴ was enacted in response to concerns about the effect that federal regulations can have on small entities. RFA requires independent and nonindependent regulatory agencies to assess the impact of their rules on “small entities,” defined as including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. Under RFA an agency must prepare an initial regulatory flexibility analysis at the time proposed rules are issued unless the head of the agency determines that the proposed rule would not have a “significant economic impact upon a substantial number of small entities.” The Act also requires agencies to ensure that small entities have an opportunity to participate in the rule-making process and requires the Chief Counsel of the Small Business Administration’s Office of Advocacy to monitor agencies’ compliance. Further, Section 610 of 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.

Congress amended RFA in 1996 with SBREFA.⁵ SBREFA made certain agency actions under RFA judicially reviewable. Other provisions in SBREFA added new requirements. For example, SBREFA requires agencies to develop one or more compliance guides for each final rule or group of related final rules for which the agency is required to prepare a regulatory flexibility analysis, and the Act requires agencies to provide small entities with some form of relief from civil monetary penalties. SBREFA also requires the Environmental Protection Agency and the Occupational Safety and Health Administration to convene advocacy review panels before publishing an initial regulatory flexibility analysis.

Unfunded Mandates Reform Act of 1995 (UMRA)

UMRA⁶ was enacted to address concerns about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided funding to cover the costs. UMRA generates information about the nature and size of potential federal mandates but does not preclude the implementation of such mandates. UMRA applies to proposed federal mandates in both legislation and

⁴5 U.S.C. §§ 601-612.

⁵5 U.S.C. § 601 note, 15 U.S.C. § 657.

⁶2 U.S.C. §§ 658-658(g), 1501-1571.

regulations, but it does not apply to rules published by independent regulatory agencies. With regard to the regulatory process, UMRA requires federal agencies to prepare written statements containing a “qualitative and quantitative assessment of the anticipated costs and benefits” for any rule for which a proposed rule was published that includes a federal mandate that may result in the expenditure of \$100 million or more in any 1 year by state, local, and tribal governments in the aggregate, or by the private sector.⁷ For such rules, agencies are to identify and consider a reasonable number of regulatory alternatives and from those select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule (or explain why that alternative was not selected). UMRA also includes a consultation requirement that agencies develop a process to permit elected officers of state, local, and tribal governments (or their designees) to provide input in the development of regulatory proposals containing significant intergovernmental mandates.

**Congressional Review Act
(CRA)**

CRA⁸ was enacted as part of SBREFA in 1996 to better ensure that Congress has an opportunity to review, and possibly reject, rules before they become effective. CRA established expedited procedures by which members of Congress may disapprove agencies’ rules by introducing a resolution of disapproval that, if adopted by both Houses of Congress and signed by the President, can nullify an agency’s rule. CRA applies to rules issued by nonindependent and independent regulatory agencies. CRA requires agencies to file final rules with both Congress and GAO before the rules can become effective.⁹ GAO’s role under CRA is to provide Congress with a report on each major rule (for example, rules with a \$100 million impact on the economy) including GAO’s assessment of the issuing agency’s compliance with the procedural steps required by various acts and executive orders governing the rule-making process.¹⁰

⁷The dollar thresholds in UMRA are in 1996 dollars and are adjusted annually for inflation.

⁸5 U.S.C. §§ 801-808.

⁹The joint resolution process has been used only once. In Pub. L. No. 107-5, 115 Stat. 7 (Mar. 20, 2001) Congress disapproved the Department of Labor’s rule on ergonomics.

¹⁰As of July 22, 2005, GAO has reviewed and reported to Congress on 576 rules under CRA.

Government Paperwork
Elimination Act (GPEA)

Congress enacted GPEA¹¹ in 1998, and the Act promoted the expansion of a trend in the federal government toward using e-government applications to collect and disseminate information and forms. GPEA requires federal agencies to provide the public, when practicable, the option of submitting, maintaining, and disclosing required information—such as employment records, tax forms, and loan applications—electronically, instead of on paper. GPEA also requires agencies to guard the privacy and protect documents from being altered and encourages federal government use of a range of electronic signature alternatives when practicable.

Truth in Regulating Act
(TIRA)

In 2000, Congress enacted TIRA¹² to provide a mechanism for Congress to obtain more information about certain rules. TIRA contemplated a 3-year pilot project during which GAO would perform independent evaluations of “economically significant” agency rules when requested by a chairman or ranking member of a committee of jurisdiction of either House of Congress. The independent evaluation would include an evaluation of the agency’s analysis of the potential benefits, potential costs, and alternative approaches considered during the rule-making proceeding.¹³ Under TIRA, GAO was required to report on its evaluations within 180 calendar days after receiving a committee request. Section 6(b) of the Act, however, provided that the pilot project would continue only if, in each fiscal year, a specific annual appropriation was made. During the 3-year period contemplated for the pilot project, Congress did not enact any specific appropriation to cover TIRA evaluations, and the authority for the 3-year pilot project expired on January 15, 2004. Congress has considered reauthorizing TIRA, and we have strongly urged that any reauthorization of TIRA continue to contain language requiring a specific annual appropriation before we are required to undertake independent evaluations of major rule makings. We have also recommended that TIRA evaluations be conducted under a pilot project basis.

¹¹44 U.S.C. §3504 note.

¹²Pub. L. No. 106-312, 114 Stat. 1248 (Oct. 17, 2000); 5 U.S.C. § 801 note.

¹³TIRA defines an “independent evaluation” as a “substantive evaluation of the agency’s data, methodology, and assumptions used in developing the economically significant rule, including - - (A) an explanation of how any strengths or weaknesses in those data, methodology, and assumptions support or detract from conclusions reached by the agency; and (B) the implications, if any, of those strengths or weaknesses for the rulemaking.” Pub. L. No. 106-312, §3(3).

Information Quality Act
(IQA)

Enacted in Section 515 of the Treasury and General Government Appropriations Act of 2001, the Information Quality Act¹⁴ directed OMB to issue governmentwide guidelines to ensure and maximize the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies. The Act requires OMB to issue guidelines directing all agencies to issue their own guidelines within 1 year and to establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency. The Act also requires agencies to report periodically to the Director of OMB on the number and nature of complaints received and how such complaints were handled by the agency.

E-Government Act

The E-Government Act¹⁵ was intended to enhance the management and promotion of electronic government services and processes. With regard to the regulatory process, the Act requires agencies, to the extent practicable, to accept public comments on proposed rules by electronic means. The Act also requires agencies to ensure that publicly accessible federal Web sites contain electronic dockets for their proposed rules, including all comments submitted on the rules and other relevant materials. The E-Government Act also established an Office of Electronic Government within OMB, headed by an administrator appointed by the President.

Related Executive Orders
and Initiatives

In addition to congressional regulatory reform initiatives enacted in statutes, it is important to also recognize the key role that presidential initiatives have in the regulatory process. Centralized review of agencies' regulations within the Executive Office of the President has been part of the rule-making process for more than 30 years. The formal process by which OIRA currently reviews agencies' proposed rules and final rules is essentially unchanged since Executive Order 12866 was issued in 1993.¹⁶ Under Executive Order 12866, OIRA reviews significant proposed and final

¹⁴IQA is also known as the Data Quality Act. Pub. L. No. 106-554 § 515, 114 Stat. 2763 (Dec. 12, 2001).

¹⁵31 U.S.C. § 507, 40 U.S.C. § 11331, 44 U.S.C. §§ 3541-3549, 3601-3606.

¹⁶Exec. Order No. 12866, 58 Fed. Reg. 51,735 (Sept. 30, 1993).

rules from all agencies, other than independent regulatory agencies, before they are published in the *Federal Register*.

The executive order states, among other things, that agencies should assess all costs and benefits of available regulatory alternatives, including both quantitative and qualitative measures. It also provides that agencies should select regulatory approaches that maximize net benefits (unless a statute requires another approach). Among other principles, the executive order encourages agencies to tailor regulations to impose the least burden on society needed to achieve the regulatory objectives. The executive order also established agency and OIRA responsibilities in the review of regulations, including transparency requirements. OIRA provides guidance to federal agencies on implementing the requirements of the executive order, such as guidance on preparing economic analyses required for significant rules.

There are also other orders that impose requirements on agencies during rule making, such as Executive Order 13132 on federalism that requires agencies to prepare a federalism summary impact statement for actions that have federalism implications.¹⁷ Also, in January 2005, OMB published a final bulletin on peer review that establishes minimum standards for when peer review is required for scientific information, including stricter minimum standards for the peer review of “highly influential” scientific assessments, and the types of peer review that should be considered by agencies in different circumstances.¹⁸ The selection of an appropriate peer review mechanism is left to the agency’s discretion.

More detailed information about these various initiatives is available in the related GAO products listed at the end of this testimony.

¹⁷Exec. Order No. 13132, 64 Fed. Reg. 43,255 (Aug. 4, 1999).

¹⁸70 Fed. Reg. 2664 (Jan. 14, 2005).

Related GAO Products

Economic Performance: Highlights of a Workshop on Economic Performance Measures. [GAO-05-796SP](#). Washington, D.C.: July 2005.

Paperwork Reduction Act: New Approach May Be Needed to Reduce Government Burden on Public. [GAO-05-424](#). Washington, D.C.: May 20, 2005.

Unfunded Mandates: Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement. [GAO-05-454](#). Washington, D.C.: March 31, 2005.

21st Century Challenges: Reexamining the Base of the Federal Government. [GAO-05-325SP](#). Washington, D.C.: February 2005.

Electronic Government: Federal Agencies Have Made Progress Implementing the E-Government Act of 2002. [GAO-05-12](#). Washington, D.C.: December 10, 2004.

Unfunded Mandates: Analysis of Reform Act Coverage. [GAO-04-637](#). Washington, D.C.: May 12, 2004.

Paperwork Reduction Act: Agencies' Paperwork Burden Estimates Due to Federal Actions Continue to Increase. [GAO-04-676T](#). Washington, D.C.: April 20, 2004.

Rulemaking: OMB's Role in Reviews of Agencies' Draft Rules and the Transparency of Those Reviews. [GAO-03-929](#). Washington, D.C.: September 22, 2003.

Electronic Rulemaking: Efforts to Facilitate Public Participation Can Be Improved. [GAO-03-901](#). Washington, D.C.: September 17, 2003.

Civil Penalties: Agencies Unable to Fully Adjust Penalties for Inflation Under Current Law. [GAO-03-409](#). Washington, D.C.: March 14, 2003.

Regulatory Flexibility Act: Clarification of Key Terms Still Needed. [GAO-02-491T](#). Washington, D.C.: March 6, 2002.

Regulatory Reform: Compliance Guide Requirement Has Had Little Effect on Agency Practices. [GAO-02-172](#). Washington, D.C.: December 28, 2001.

Federal Rulemaking: Procedural and Analytical Requirements at OSHA and Other Agencies. [GAO-01-852T](#). Washington, D.C.: June 14, 2001.

Regulatory Reform: Implementation of Selected Agencies' Civil Penalties Relief Policies for Small Entities. [GAO-01-280](#). Washington, D.C.: February 20, 2001.

Regulatory Flexibility Act: Implementation in EPA Program Offices and Proposed Lead Rule. [GAO/GGD-00-193](#). Washington, D.C.: September 20, 2000.

Electronic Government: Government Paperwork Elimination Act Presents Challenges for Agencies. [GAO/AIMD-00-282](#). Washington, D.C.: September 15, 2000.

Regulatory Reform: Procedural and Analytical Requirements in Federal Rulemaking. [GAO/T-GGD/OGC-00-157](#). Washington, D.C.: June 8, 2000.

Federalism: Previous Initiatives Have Little Effect on Agency Rulemaking. [GAO/T-GGD-99-131](#). Washington, D.C.: June 30, 1999.

Regulatory Accounting: Analysis of OMB's Reports on the Costs and Benefits of Federal Regulation. [GAO/GGD-99-59](#). Washington, D.C.: April 20, 1999.

Regulatory Flexibility Act: Agencies' Interpretations of Review Requirements Vary. [GAO/GGD-99-55](#). Washington, D.C.: April 2, 1999.

Regulatory Burden: Some Agencies' Claims Regarding Lack of Rulemaking Discretion Have Merit. [GAO/GGD-99-20](#). Washington, D.C.: January 8, 1999.

Federal Rulemaking: Agencies Often Published Final Actions Without Proposed Rules. [GAO/GGD-98-126](#). Washington, D.C.: August 31, 1998.

Regulatory Management: Implementation of Selected OMB Responsibilities Under the Paperwork Reduction Act. [GAO/GGD-98-120](#). Washington, D.C.: July 9, 1998.

Regulatory Reform: Agencies Could Improve Development, Documentation, and Clarity of Regulatory Economic Analyses. [GAO/RCED-98-142](#). Washington, D.C.: May 26, 1998.

Regulatory Reform: Implementation of Small Business Advocacy Review Panel Requirements. [GAO/GGD-98-36](#). Washington, D.C.: March 18, 1998.

Congressional Review Act: Implementation and Coordination. [GAO/T-OGC-98-38](#). Washington, D.C.: March 10, 1998.

Regulatory Reform: Agencies' Section 610 Review Notices Often Did Not Meet Statutory Requirements. [GAO/T-GGD-98-64](#). Washington, D.C.: February 12, 1998.

Unfunded Mandates: Reform Act Has Had Little Effect on Agencies' Rulemaking Actions. [GAO/GGD-98-30](#). Washington, D.C.: February 4, 1998.

Regulatory Reform: Changes Made to Agencies' Rules Are Not Always Clearly Documented. [GAO/GGD-98-31](#). Washington, D.C.: January 8, 1998.

Regulatory Reform: Agencies' Efforts to Eliminate and Revise Rules Yield Mixed Results. [GAO/GGD-98-3](#). Washington, D.C.: October 2, 1997.

Managing for Results: Regulatory Agencies Identified Significant Barriers to Focusing on Results. [GAO-GGD-97-83](#). Washington, D.C.: June 24, 1997.

Regulatory Burden: Measurement Challenges and Concerns Raised by Select Companies. [GAO/GGD-97-2](#). Washington, D.C.: November 18, 1996.

Regulatory Reform: Implementation of the Regulatory Review Executive Order. [GAO/T-GGD-96-185](#). Washington, D.C.: September 25, 1996.

Regulatory Flexibility Act: Status of Agencies' Compliance. [GAO/GGD-94-105](#). Washington, D.C.: April 27, 1994.



Highlights of [GAO-05-796SP](#)

Why GAO Convened This Workshop

Improving the economy and efficiency of federal programs has long been a key objective of the Government Accountability Office (GAO). To this end, GAO held a workshop on December 17, 2004, to discuss the use of economic analysis, such as benefit cost or cost effectiveness, for helping to measure the performance of federal programs. The workshop's purpose was to

- discuss the present state of economic performance measures and identify gaps in their application and the barriers and analytical issues that limit their use in helping assess the performance of federal programs and
- identify opportunities for the federal government and professional and academic institutions to improve (1) the use of economic performance measures for evaluating federal programs and (2) the general economic principles and guidance on which economic performance analysis is based.

ECONOMIC PERFORMANCE

Highlights of a Workshop on Economic Performance Measures

What Participants Said

Workshop participants identified a number of issues regarding the use of economic performance analysis—benefit-cost or cost-effectiveness analysis—in evaluating federal program performance. They generally said the following:

- The quality of the economic performance assessment of federal programs has improved but is still highly variable and not sufficient to adequately inform decision makers.
- The gaps in applying economic performance measures are that they are not widely used, mechanisms for revisiting a regulation or program are lacking, retrospective analyses are often not done, and homeland security regulations present additional challenges and typically do not include economic analysis.
- Barriers include agencies' lack of resources and only limited demand from decision makers for benefit-cost analysis. In addition, some participants stated that organizational barriers called stovepipes or silos hinder communication.
- Some analytical issues that affect the application of economic performance measures are limited guidance on assessing unquantifiable benefits, equity, and distributional effects of federal actions; lack of agreement on some values for key assumptions; and lack of guidance on tools that do not monetize outcomes, such as multiobjective analysis.
- Opportunities to expand the use of measures include evaluation of existing programs retrospectively and application to homeland security issues.
- Ways to improve the general economic principles and guidance that economic performance analysis is based upon include developing a minimum set of principles and abbreviated guidelines for economic performance analysis, developing one-page summaries and scorecards of analysis results, standardizing some key values for assumptions, and creating an independent and flexible organization to provide guidance and develop standards.

www.gao.gov/cgi-bin/getrpt?GAO-05-796SP.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Nancy R. Kingsbury at (202) 512-2700 or kingsburyn@gao.gov.



Highlights of [GAO-05-424](#), a report to congressional requesters

PAPERWORK REDUCTION ACT

New Approach May Be Needed to Reduce Government Burden on Public

Why GAO Did This Study

Americans spend billions of hours each year providing information to federal agencies by filling out information collections (forms, surveys, or questionnaires). A major aim of the Paperwork Reduction Act (PRA) is to balance the burden of these collections with their public benefit. Under the act, agencies' Chief Information Officers (CIO) are responsible for reviewing information collections before they are submitted to the Office of Management and Budget (OMB) for approval. As part of this review, CIOs must certify that the collections meet 10 standards set forth in the act (see table).

GAO was asked to assess, among other things, this review and certification process, including agencies' efforts to consult with the public. To do this, GAO reviewed a governmentwide sample of collections, reviewed processes and collections at four agencies that account for a large proportion of burden, and performed case studies of 12 approved collections.

What GAO Recommends

GAO recommends that OMB and the agencies take steps to improve review processes and compliance with the act. Also, the Congress may wish to consider mandating pilot projects to target some collections for rigorous analysis that includes public outreach. In commenting on a draft of this report, OMB and the agencies agreed with parts of the report and disagreed with others.

www.gao.gov/cgi-bin/getrpt?GAO-05-424.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Linda Koontz at (202) 512-6240 or koontzl@gao.gov.

What GAO Found

Governmentwide, agency CIOs generally reviewed information collections and certified that they met the standards in the act. However, GAO's analysis of 12 case studies at the Internal Revenue Service (IRS) and the Departments of Veterans Affairs, Housing and Urban Development, and Labor showed that CIOs certified collections even though support was often missing or partial (see table). For example, in nine of the case studies, agencies did not provide support, as the law requires, for the standard that the collection was developed by an office with a plan and resources to use the information effectively. Because OMB instructions do not ask explicitly for this support, agencies generally did not address it. Further, although the law requires agencies both to publish notices in the *Federal Register* and to otherwise consult with the public, agencies governmentwide generally limited consultation to the publication of notices, which generated little public comment. Without appropriate support and public consultation, agencies have reduced assurance that collections satisfy the standards in the act.

Processes outside the PRA review process, which are more rigorous and involve greater public outreach, have been set up by IRS and the Environmental Protection Agency (EPA), whose missions involve numerous information collections and whose management is focused on minimizing burden. For example, each year, IRS subjects a few forms to highly detailed, in-depth analyses, including extensive outreach to the public affected and the information users. IRS reports that this process—performed on forms that have undergone CIO review and received OMB approval—has reduced burden by over 200 million hours since 2002. In contrast, for the 12 case studies, the CIO review process did not reduce burden. Without rigorous evaluative processes, agencies are unlikely to achieve the PRA goal of minimizing burden while maximizing utility.

Support Provided by Agencies for Paperwork Reduction Act Standards in 12 Case Studies

Standards: The information collection—	Total ^a	Support provided		
		Yes	Partial	No
Is necessary for the proper performance of agency functions.	12	6	6	0
Avoids unnecessary duplication.	11	2	2	7
Reduces burden on the public, including small entities.	12	5	7	0
Uses language that is understandable to respondents.	12	1	0	11
Will be compatible with respondents' recordkeeping practices.	12	3	0	9
Indicates period for which records must be retained.	6	3	3	0
Gives required information (e.g., whether response is mandatory).	12	4	8	0
Was developed by an office with necessary plan and resources.	11	2	0	9
Uses appropriate statistical survey methodology (if applicable).	1	1	0	0
Makes appropriate use of information technology.	12	8	4	0
Total	101	35	30	36

Source: Paperwork Reduction Act, Pub. L. 104-13, 109 Stat. 173-4, sec. 3506(c)(3).

^aThe total is not always 12 because not all certifications applied to all collections.



Highlights of [GAO-05-454](#), a report to the Chairman, Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to address concerns about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided federal funding to cover the costs. UMRA generates information about the nature and size of potential federal mandates on nonfederal entities to assist Congress and agency decision makers in their consideration of proposed legislation and regulations. However, it does not preclude the implementation of such mandates.

At various times in its 10-year history, Congress has considered legislation to amend various aspects of the act to address ongoing questions about its effectiveness. Most recently, GAO was asked to consult with a diverse group of parties familiar with the act and to report their views on (1) the significant strengths and weaknesses of UMRA as the framework for addressing mandate issues and (2) potential options for reinforcing the strengths or addressing the weaknesses. To address these objectives, we obtained information from 52 organizations and individuals reflecting a diverse range of viewpoints. GAO analyzed the information acquired and organized it into broad themes for analytical and reporting purposes.

GAO makes no recommendations in this report.

www.gao.gov/cgi-bin/getrpt?GAO-05-454.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Orice M. Williams at (202) 512-5837, or williamso@gao.gov.

UNFUNDED MANDATES

Views Vary About Reform Act's Strengths, Weaknesses, and Options for Improvement

What GAO Found

The parties GAO contacted provided a significant number of comments about UMRA, specifically, and federal mandates, generally. Their views often varied across and within the five sectors we identified (academic/think tank, public interest advocacy, business, federal agencies, and state and local governments). Overall, the numerous strengths, weaknesses and options for improvement identified during the review fell into several broad themes, including UMRA-specific issues such as coverage and enforcement, among others, and more general issues about the design, funding, and evaluation of federal mandates. First, UMRA coverage was, by far, the most frequently cited issue by parties from the various sectors. Parties across most sectors that provided comments said UMRA's numerous definitions, exclusions, and exceptions leave out many federal actions that may significantly impact nonfederal entities and should be revisited. Among the most commonly suggested options were to expand UMRA's coverage to include a broader set of actions by limiting the various exclusions and exceptions and lowering the cost thresholds, which would make more federal actions mandates under UMRA. However, a few parties, primarily from the public interest advocacy sector, viewed UMRA's narrow coverage as a strength that should be maintained.

Second, parties from various sectors also raised a number of issues about federal mandates in general. In particular, they had strong views about the need for better evaluation and research of federal mandates and more complete estimates of both the direct and indirect costs of mandates on nonfederal entities. The most frequently suggested option to address these issues was more post-implementation evaluation of existing mandates or "look backs." Such evaluations of the actual performance of mandates could enable policymakers to better understand mandates' benefits, impacts and costs among other issues. In turn, developing such evaluation information could lead to the adjustment of existing mandate programs in terms of design and/or funding, perhaps resulting in more effective or efficient programs.

Going forward, the issue of unfunded mandates raises broader questions about assigning fiscal responsibilities within our federal system. Federal and state governments face serious fiscal challenges both in the short and longer term. As GAO reported in its February 2005 report entitled *21st Century Challenges: Reexamining the Base of the Federal Government* ([GAO-05-325SP](#)), the long-term fiscal challenges facing the federal budget and numerous other geopolitical changes challenging the continued relevance of existing programs and priorities warrant a national debate to review what the government does, how it does business and how it finances its priorities. Such a reexamination includes considering how responsibilities for financing public services are allocated and shared across the many nonfederal entities in the U.S. system as well.



Highlights of [GAO-05-12](#), a report to congressional requesters

Why GAO Did This Study

The E-Government Act (E-Gov Act) of 2002 was enacted to promote the use of the Internet and other information technologies to improve government services for citizens, internal government operations, and opportunities for citizen participation in government.

The act directs the Office of Management and Budget (OMB) and federal agencies to take specific actions to promote electronic government. GAO was asked to review the implementation status of major provisions from Titles I and II of the act, which include provisions covering a wide range of activities across the federal government.

What GAO Recommends

GAO is making recommendations to OMB regarding implementation of the act in the areas of e-government approaches to crisis preparedness, contractor innovation, and federally funded research and development, to help ensure that the act's objectives are achieved.

In commenting on a draft of this report, officials from the Department of Homeland Security, General Services Administration, and OMB generally agreed with its content and recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-05-12.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Linda D. Koontz at (202) 512-6240 or koontzl@gao.gov.

ELECTRONIC GOVERNMENT

Federal Agencies Have Made Progress Implementing the E-Government Act of 2002

What GAO Found

In most cases, OMB and federal agencies have taken positive steps toward implementing provisions of Titles I and II of the E-Gov Act that GAO reviewed. For example, OMB established the Office of E-Government, designated its Assistant Director for Information Technology (IT) and E-Government as the office's Administrator in April 2003, and published guidance to federal agencies on implementing the act in August 2003. Apart from general requirements applicable to all agencies (which GAO did not review), in most cases, OMB and designated federal agencies have taken action to address the act's requirements within stipulated time frames. For example, OMB established the Interagency Committee on Government Information in June 2003, within the deadline prescribed by the act. The committee is to develop recommendations on the categorization of government information and public access to electronic information. Similarly, in most cases where deadlines are not specified, OMB and designated federal agencies have either fully implemented the provisions or demonstrated positive action toward implementation. For example, in May 2003, the E-Government Administrator issued a memorandum detailing procedures for requesting funds from the E-Government Fund, although the act did not specify a deadline for this action. As stipulated by the act, the E-Government Fund is to be used to support projects that enable the federal government to expand its ability to conduct activities electronically.

Although the government has made progress in implementing the act, the act's requirements have not always been fully addressed. In several cases, actions taken do not satisfy the requirements of the act or no significant action has been taken. In particular, OMB has not ensured that specified activities have taken place regarding e-government approaches to crisis preparedness (a study and follow-up response), contractor innovation (establishment of a program), and federally funded research and development (support of an information repository and Web site). In these cases, either the actions OMB has taken do not fully address the act's provisions, or OMB has not yet made key decisions that would allow actions to take place. Until these issues are addressed, the government may be at risk of not fully achieving the objective of the E-Government Act to promote better use of the Internet and other information technologies to improve government services and enhance opportunities for citizen participation in government.



UNFUNDED MANDATES

Analysis of Reform Act Coverage

Highlights of [GAO-04-637](#), a report to the Chairman, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

Why GAO Did This Study

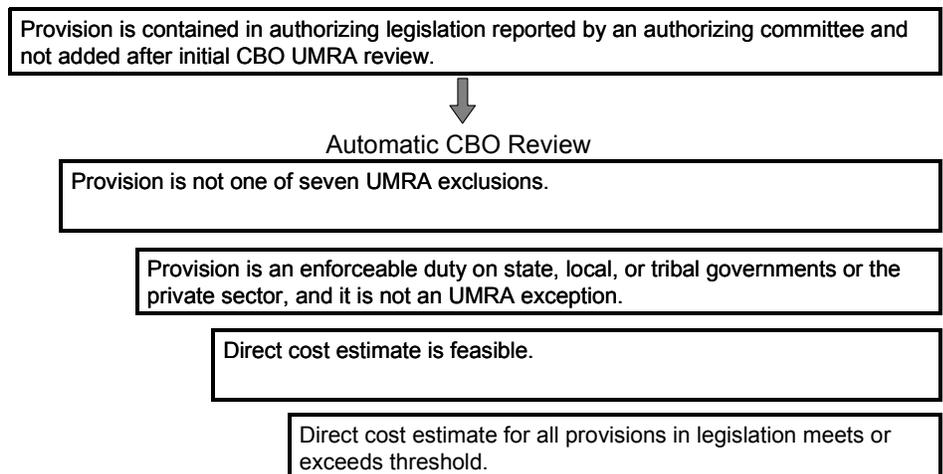
The Unfunded Mandates Reform Act of 1995 (UMRA) was enacted to address concerns about federal statutes and rules that require state, local, and tribal governments or the private sector to expend resources to achieve legislative goals. UMRA generates information about the nature and size of potential federal mandates to assist Congress and agency decision makers in their consideration of proposed legislation and rules. However, concerns about actual or perceived federal mandates continue. To provide information and analysis regarding UMRA's implementation, GAO was asked to (1) describe the applicable procedures, definitions, and exclusions under UMRA for identifying federal mandates in statutes and rules, (2) identify statutes and final rules that contained federal mandates under UMRA, and (3) provide examples of statutes and final rules that were not identified as federal mandates, but that affected parties might perceive as "unfunded mandates," and the reasons these statutes and rules were not federal mandates under UMRA. GAO focused on statutes enacted and final rules issued in 2001 and 2002 to address the second and third objectives.

What GAO Found

UMRA generally requires congressional committees and the Congressional Budget Office (CBO) to identify and estimate the costs of federal mandates contained in proposed legislation and federal agencies to do so for federal mandates contained in their rules. Identification of mandates is a complex process with multiple definitions, exclusions, and cost thresholds. Also, some legislation and rules may be enacted or issued via procedures that do not trigger UMRA reviews.

In 2001 and 2002, 5 of 377 statutes enacted and 9 of 122 major or economically significant final rules issued were identified as containing federal mandates at or above UMRA's thresholds. Of the other federal actions in those 2 years, at least 43 statutes and 65 rules contained new requirements on nonfederal parties that might be perceived as "unfunded mandates." For 24 of those statutes and 26 of those rules, CBO or federal agencies had determined that the estimated direct costs or expenditures would not meet or exceed applicable thresholds. For the remaining examples of statutes, most often UMRA did not require a CBO review prior to their enactment. The remaining rules most often did not trigger UMRA because they were issued by independent regulatory agencies. Despite the determinations made under UMRA, some statutes and rules not triggering UMRA's thresholds appeared to have potential financial impacts on affected nonfederal parties similar to those of the actions that were identified as containing mandates at or above the act's thresholds.

Proposed Legislation Must Pass Multiple Steps to Be Identified as Containing Federal Mandates at or Above UMRA's Cost Thresholds



Source: GAO.

www.gao.gov/cgi-bin/getrpt?GAO-04-637.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Patricia A. Dalton at (202) 512-6806 or daltonp@gao.gov.



Highlights of [GAO-03-929](#), a report to congressional requesters

Why GAO Did This Study

Under Executive Order 12866, the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) reviews hundreds of agency rules each year before they are published in the *Federal Register*. Those reviews can have a significant effect on a broad array of public policies. GAO was asked to (1) describe OIRA's review process and any changes in its policies or processes in recent years, (2) provide detailed information about rules submitted by nine health, safety, or environmental agencies that were returned, withdrawn, or changed at OIRA's suggestion, and (3) describe how OIRA decided that certain existing rules merited high priority review.

What GAO Recommends

GAO recommends that the OMB Director build on recent improvements that have been made in the transparency of the OIRA review process. In particular, GAO recommends that agencies be instructed to document substantive changes made at OIRA's suggestion to draft rules submitted for review whenever they occur, not just changes that OIRA recommended during formal reviews.

OMB said the factual foundations of our report were well grounded but disagreed with most of our recommendations, saying that the report had not demonstrated the need or desirability of changing the agency's existing level of transparency.

www.gao.gov/cgi-bin/getrpt?GAO-03-929.

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

RULEMAKING

OMB's Role in Reviews of Agencies' Draft Rules and the Transparency of Those Reviews

What GAO Found

The formal process by which OIRA reviews agencies' proposed and final rules is essentially unchanged since Executive Order 12866 was issued in 1993. However, there have been several changes in OIRA's policies in recent years, including increased use of public letters explaining why rules were returned to the agencies and prompting the development of new rules, increased emphasis on economic analysis, stricter adherence to the 90-day time limit for OIRA review, and improvements in the transparency of the OIRA review process (although some elements of that process are still unclear). Underlying many of these changes is a shift in how recent OIRA administrators view the office's role in the rulemaking process—from "counselor" to "gatekeeper." OIRA sometimes reviews drafts of rules before they are formally submitted, and OIRA has said it can have its greatest influence on agencies' rules during this informal review period. However, OIRA contends that agencies need only document the changes made to rules during what are sometimes very brief formal review periods.

Because about 400 rules were changed, returned, or withdrawn during the 1-year period that GAO examined, the review focused on 85 rules from the nine health, safety, or environmental agencies with five or more such rules. OIRA significantly affected 25 of those 85 rules. The Environmental Protection Agency's rules were most often significantly changed, and almost all of the returned rules were from the Department of Transportation. OIRA's suggestions appeared to have at least some effect on almost all of the 25 rules' potential costs and benefits or the agencies' estimates of those costs and benefits. Outside parties contacted OIRA before or during its formal review regarding 11 of the 25 rules that OIRA significantly affected. In 7 of these 11 cases, at least some of OIRA's recommendations were similar to those of the outside parties, but we could not determine whether those contacts influenced OIRA's actions. The agencies' docket files did not always provide clear and complete documentation of the changes made during OIRA's review or at OIRA's suggestion, as required by the executive order. However, some agencies clearly documented these changes, sometimes including changes suggested during OIRA's informal reviews.

OIRA did not publicly disclose how it determined that 23 of the 71 rules nominated by the public for change or elimination in 2001 merited high priority review. As explained to GAO, OIRA desk officers made the initial determinations regarding issues with which they were familiar, subject to the approval by OIRA management. The Mercatus Center at George Mason University made most of the nominations overall and in the high priority group. Regulatory agencies or OIRA have at least begun to address the issues raised in many of the 23 suggestions. OIRA's 2002 nomination and review process was different from the 2001 process in several respects (e.g., broader request for reforms, more responses from more commentators, prioritization of the suggestions being made by the agencies, and clearer discussion of process and criteria).

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