Guidance Documents from Federal Agencies

How agencies clarify legal information, respond to questions, and inform the public

Where Does Guidance Fit In?

- Statute
  - Congress provides authority to agencies
  - Legally binding

- Regulations
  - Statutes are implemented by regulations, which are legally enforceable
  - Legally binding

- Guidance
  - Agency may explain how regulations are interpreted
  - Not legally binding

Why Do Agencies Use Guidance Documents?

- Explain new regulations
- Respond to stakeholder questions
- Clarify existing policies
- Share leadership priorities and initiatives

Guidance documents can prompt changes in behavior of regulated parties and the general public.

Types of Guidance Documents

Non-significant Guidance Documents
- Agencies consider most guidance documents “non-significant”
- Not subject to Office of Management and Budget (OMB) requirements
- Currently no specific government-wide policies for production

Significant Guidance Documents
- Agencies consider guidance documents with broad or substantial effects “significant”
- Subject to requirements in OMB’s Final Bulletin for Agency Good Guidance Practices and some are reviewed by OMB before issuance
- Agencies must have written procedures for internal approval
- Must be listed on a departmental website

GAO examined guidance processes at the departments of Agriculture, Education, Health and Human Services, Labor, and selected subagencies within these departments.

How Did Selected Agencies Disseminate their Guidance?

- Website: 25
- E-mail: 22
- Meetings: 22
- E-mail Lists: 19
- External Partners: 17
- Social Media: 13
- Mass Media: 11
- Newsletters: 7

Data from 25 selected subagencies on dissemination methods

How Can Internal Controls be Applied to Guidance Processes?

- Risk assessment: Assessing the level of risk helps agencies determine potential legal implications and appropriate levels of review.
- Control activities: Maintaining written policies and procedures helps ensure that officials understand how to adequately review guidance before issuance.
- Information and communication: Obtaining feedback from management, internal offices, the public, and other interested parties is essential to ensuring guidance is effective.
- Monitoring: Ongoing monitoring processes can help ensure that agencies use applicable feedback to improve future guidance and revisions of guidance.

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