

Why GAO Did This Study

Agencies rely on guidance to clarify regulatory text or statutes, to respond to the questions of affected parties in a timely way, and to inform the public about complex policy implementation topics. Unlike regulations, guidance is not legally binding.

GAO was asked to examine guidance processes at four departments. This report reviews how (1) agencies use guidance and decide to issue guidance rather than regulations; (2) follow applicable criteria and leading practices in their policies, procedures, and practices for producing guidance; and (3) agencies disseminate guidance to ensure public access and feedback. GAO reviewed guidance processes at all 25 components in the four departments that (1) were within the requesting committee's jurisdiction, and (2) engaged in regulatory or grant activities. GAO reviewed relevant requirements, written procedures, guidance and websites, and interviewed agency officials.

What GAO Recommends

GAO is recommending that HHS and DOL ensure consistent application of OMB requirements for significant guidance. GAO also recommends that USDA, Education, HHS, and DOL strengthen the use of internal controls in guidance production processes and improve online guidance dissemination. USDA, Education, HHS and DOL generally agreed with the recommendations.

REGULATORY GUIDANCE PROCESSES

Selected Departments Could Strengthen Internal Control and Dissemination Practices

What GAO Found

The four departments—Agriculture (USDA), Education (Education), Health and Human Services (HHS), and Labor (DOL)—and their selected components used guidance for multiple purposes, such as clarifying or interpreting regulations and providing grant administration information. The terminology used for agency guidance varied and agency components issued varying amounts of guidance, ranging from about 10 to over 100 guidance documents each year. The key criterion used when deciding whether to issue a regulation or guidance was whether it needed to be binding; in such cases agencies proceeded with regulation. Officials reported that they routinely consulted with legal counsel when making these choices. Departments typically identified few of their guidance documents as “significant,” generally defined by the Office of Management and Budget (OMB) as guidance with a broad and substantial impact on regulated entities.

All four departments identified standard practices to follow when developing guidance. They addressed OMB's requirements for significant guidance to varying degrees and could strengthen internal controls for issuing guidance. Education and USDA had written departmental procedures for approval of significant guidance as required by OMB. DOL's procedures were not available to staff and required updating. HHS had no written procedures. Ensuring these procedures are available could better ensure that components consistently follow OMB's requirements. In the absence of specific government standards for non-significant guidance—the majority of issued guidance—the application of internal control standards is particularly important. The 25 components GAO reviewed addressed some control standards more regularly than others. For example, few components had written procedures to ensure consistent application of guidance processes. All components could describe standard review practices and most used tools to document management approval of draft guidance. Of the 25 components, 15 cited examples in which they conferred with external nonfederal stakeholders while developing guidance and nearly half did not regularly evaluate whether issued guidance remained current and effective.

Components used different strategies to disseminate guidance and all relied primarily on posting the guidance on their websites. As such, components should follow applicable requirements for federal websites. One of these requirements—easy access to current and relevant guidance—could also facilitate opportunities for affected parties and stakeholders to provide feedback on those documents. USDA, DOL, and Education posted their significant guidance on a departmental website as directed by OMB; HHS did not. Components used several strategies—including organizing guidance by audience or topic and highlighting new or outdated guidance—to facilitate access. However, GAO identified factors that hindered online access, including long lists of guidance and documents dispersed among multiple web pages. All components GAO studied collected web metrics and many used them to evaluate online guidance dissemination. However, many of these components did not use metrics to improve how they disseminated guidance through their websites. Beyond their websites, components found other ways to disseminate and obtain feedback on issued guidance, including focus groups, surveys, and direct feedback from the public at conferences, webinars, and from monitoring visits.