

# GAO Highlights

Highlights of [GAO-16-505T](#), a testimony before the Subcommittee on Government Operations, Committee on Oversight and Government Reform, House of Representatives

## Why GAO Did This Study

Federal regulation is a basic tool of government. Agencies issue regulations to achieve public policy goals such as 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. Congresses and Presidents have acted to refine and reform the regulatory process during the last several decades. Among the goals of such initiatives are enhancing oversight of rulemaking by Congress and the President, promoting greater transparency and public participation in the process, and reducing regulatory burdens on affected parties.

Congress has often asked GAO to evaluate the implementation of procedural and analytical requirements that apply to the rulemaking process. The importance of improving the transparency of the rulemaking process emerged as a common theme throughout GAO's body of work. Based on that body of work, this testimony addresses (1) GAO's prior findings and OIRA's progress to date on recent GAO recommendations to improve the transparency of the regulatory review process, and (2) other challenges and opportunities GAO has identified for increasing the transparency and oversight of the rulemaking process.

GAO has made 25 prior related recommendations of which OMB has implemented 9 to date.

View [GAO-16-505T](#). For more information, contact Michelle Sager at (202) 512-6806 or [sagem@gao.gov](mailto:sagem@gao.gov).

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## FEDERAL RULEMAKING

### Opportunities Remain for OMB to Improve the Transparency of Rulemaking Processes

## What GAO Found

GAO has consistently found opportunities to improve the transparency of regulatory processes coordinated through the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA). Three GAO reports on OIRA's reviews of agencies' rules under Executive Order 12866 illustrate current and specific actions that would increase the transparency of that review process.

- In a 2014 report on cost-benefit analysis, GAO found that OIRA's reviews resulted in changes. However, in 72 percent of the 109 rules GAO reviewed, there was no explanation for why the rule was designated as significant.
- In a 2009 report on the development of rules, GAO found that documentation of OIRA's reviews could be improved. In reviews of 12 case studies, GAO found uneven attribution of changes made during the OIRA review period and differing interpretations regarding which changes required documentation.
- In a 2003 report, GAO examined 85 rules from nine health, safety, or environmental agencies. GAO found that, while the OIRA review process had significantly affected 25 of those rules, some agencies' files did not provide clear and complete documentation of changes made during OIRA's review. However, a few agencies exhibited exemplary transparency practices.

Four GAO reports covering the topics of regulatory guidance, retrospective regulatory review processes, and exceptions for expediting the rulemaking process further illustrate opportunities for OMB to enhance transparency.

- In a 2015 report on guidance development processes at four agencies GAO found that all four identified standard practices to follow when developing guidance. However, the four agencies addressed OMB's requirements on significant guidance to varying degrees.
- In 2007 and 2014 reports on retrospective regulatory reviews, GAO found that, while such reviews often resulted in changes, OMB and agencies could improve the reporting of progress to enhance the transparency and usefulness of information provided to the public.
- In a 2012 report on exceptions to proposed rules, GAO reviewed a generalizable sample of final rules published over an 8 year period. GAO found that, although agencies often requested comments on final major rules (rules with an annual impact of \$100 million or more) issued without a prior notice of proposed rulemaking, the agencies did not always respond to comments received.

GAO made 25 recommendations to OMB to address the transparency issues identified in these seven reports. OMB has implemented 9 of the recommendations. GAO believes that the other 16 recommendations that have not been implemented still have merit and, if acted upon, would improve the transparency of federal rulemaking. In a step in that direction, the OIRA Administrator in 2015 noted that OIRA has worked with agencies to help them with their Executive Order disclosure requirements.