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FEDERAL RULEMAKING

OMB Should Work with Agencies to Improve Congressional Review Act Compliance during and at the End of Presidents' Terms

Why GAO Did This Study

The Presidential Transitions Improvements Act of 2015 includes a provision for GAO to assess multiple characteristics of final significant regulatory actions promulgated by executive departments during presidential transition periods (September 23 through January 20) at the end of Presidents Clinton, Bush, and Obama's administrations and compare them to each other and to regulations issued during the same 120-day period in nontransition years since 1996.

Among other objectives, GAO assessed the extent to which there was variation in 1) the number of regulations, their scope, and other indicators; and 2) agencies' reported compliance with procedural requirements for promulgating the regulations. To address these objectives, GAO reviewed the text of the regulations published in the *Federal Register*, and reviewed the universe of all 527 economically significant final regulations (generally those with an annual effect of \$100 million or more) published during the specified transition and nontransition periods and a generalizable stratified random sample of 358 of the 1,633 significant final regulations published during the same time periods.

What GAO Recommends

GAO recommends that OMB, as part of its regulatory review process, identify economically significant regulations at potential risk of not complying with CRA and work with agencies to ensure compliance. OMB staff did not agree or disagree with the recommendation.

View GAO-18-183. For more information, contact Heather Krause at (202) 512-6806 or Krauseh@gao.gov.

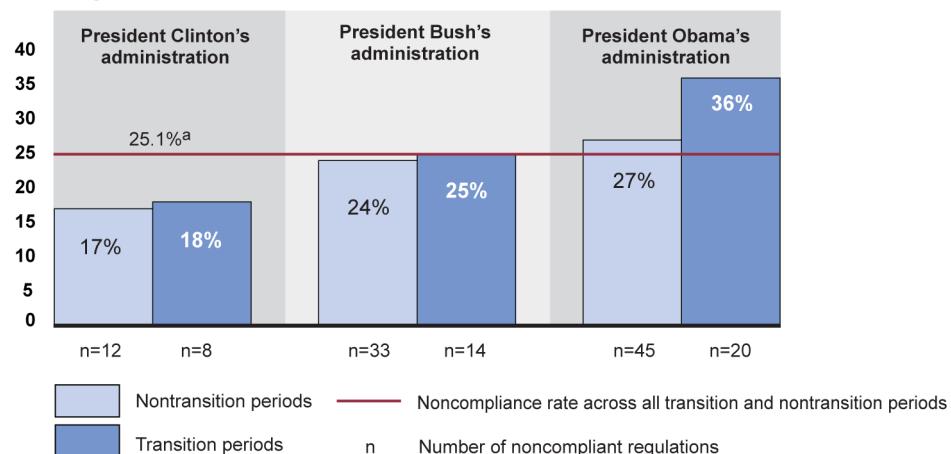
What GAO Found

During transition periods at the end of presidential administrations, agencies published more final regulations and more frequently provided advanced notice to the public on those regulations compared to nontransition periods. The Clinton, Bush, and Obama administrations published on average roughly 2.5 times more economically significant regulations during transition periods than during nontransition periods. But agencies more often, relative to nontransition periods, provided the public an opportunity to influence the development of the transition-period regulations by providing advanced notice of their issuance and opportunities to comment on proposed regulations before they were finalized.

In their published regulations, agencies reported that compliance with four of five procedural requirements was high during both transition and nontransition periods, but not with the Congressional Review Act (CRA). During all periods, agencies reported complying with requirements, such as the Regulatory Flexibility Act, for nearly all economically significant regulations and the majority of significant regulations. Agencies less often complied with one or more CRA requirements. (See figure.) Though agencies are responsible for complying with CRA, the Office of Management and Budget (OMB) is responsible for oversight of agencies' rulemaking, consistent with law, and reviews regulations before publication, which provides an opportunity to identify and help agencies avoid potential noncompliance. The most common CRA deficiency was agencies' failure to provide Congress the required time to review and possibly disapprove regulations, which GAO has also identified as a deficiency in previous work. Economically significant regulations for which OMB completed its review within 3 months before the planned effective date were at high risk of not complying with CRA, thus increasing the risk that agencies would not provide Congress with the required time for its reviews.

Economically Significant Regulations Determined to be Noncompliant with the Congressional Review Act

Percentage



Source: GAO analysis of published regulations, GAO major rule reports, and the *Congressional Record*. | GAO-18-183