

# GAO Highlights

Highlights of [GAO-18-22](#), a report to the Chairman, Subcommittee on Regulatory Affairs and Federal Management, Committee on Homeland Security and Governmental Affairs, U.S. Senate

## Why GAO Did This Study

Within the limits of their statutory authority, agencies may design their regulations in different ways to achieve intended policy outcomes. Agencies also decide how they will promote compliance with their regulations and ensure that regulated entities are informed of regulatory requirements.

GAO was asked to review how agencies make regulatory design and enforcement decisions. This report describes how selected agencies report (1) making decisions on regulatory designs among available options, (2) making decisions to designate resources among available compliance and enforcement activities, and (3) evaluating those decisions, and also identifies (4) key considerations for decision makers related to regulatory design and enforcement. To describe how agencies make and evaluate these decisions, GAO reviewed regulatory processes and spoke with officials at six executive departments—the Departments of Agriculture (USDA), Commerce, Health and Human Services (HHS), Labor (Labor), and Transportation and the Environmental Protection Agency (EPA)—based on volume of significant rulemaking, and 13 subcomponents within those departments. To identify key considerations for regulatory decision makers, GAO reviewed existing criteria, including statutory and Executive requirements, conducted a literature review, and obtained input on identified considerations with subject matter specialists.

GAO is not making any recommendations in this report. USDA, HHS, Labor, and the EPA provided technical comments that were incorporated as appropriate.

View [GAO-18-22](#). For more information, contact Heather Krause (202) 512-6806 or [krauseh@gao.gov](mailto:krauseh@gao.gov).

October 2017

## FEDERAL REGULATIONS

### Key Considerations for Agency Design and Enforcement Decisions

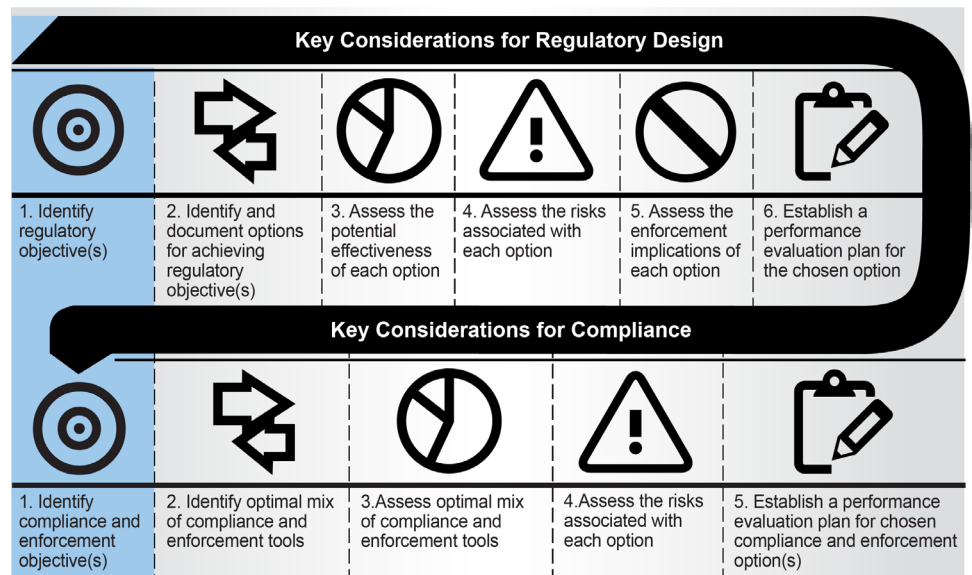
#### What GAO Found

Agencies have multiple available regulatory designs. Selected agency processes for choosing among them are informed by statutory and Executive requirements, regulatory objectives, and statutory discretion. Officials reported a preference for “performance” designs that establish an outcome but allow flexibility in how to achieve it, but stated that in some cases their objectives could require use of more prescriptive “design-based” regulations that specify a certain required technology or action. Officials at all selected agencies stated that they discuss potential regulatory designs internally, but some agency processes also included practices such as documentation of identified design options and assessments of the options’ risks and enforcement implications.

Selected agencies used multiple tools and approaches for allocating resources to elicit compliance. Agencies generally have flexibility to use a mix of tools, including providing compliance assistance to help regulated entities understand requirements, and monitoring and enforcement through inspections. Selected agency processes to allocate compliance resources vary, and agencies reported using collected data to target enforcement resources to address risks.

Selected agencies supplemented feedback on effectiveness of their regulatory design and enforcement approaches with evaluations, which agency officials said could prompt changes. When agencies identify noncompliance, selected agencies may update their regulation or their compliance strategy.

GAO identified key considerations to strengthen agency decisions related to regulatory design and enforcement (see figure). These build on current directives, academic research, and the experiences of selected agencies and are intended to serve as a resource for decision makers in designing—or redesigning—their regulations and determining how best to elicit compliance.



Sources: GAO analysis of academic literature and applicable internal controls, risk principles, and executive orders. | GAO-18-22