GAO Highlights

Highlights of GAO-18-256, a report to congressional addressees

January 2018

FINANCIAL SERVICES REGULATIONS

Procedures for Reviews under Regulatory Flexibility Act Need to Be Enhanced

Why GAO Did This Study

Since the 2007–2009 financial crisis, federal financial regulators have issued hundreds of rules to implement reforms intended to strengthen the financial services industry. Financial regulators must comply with rulemaking requirements such as RFA when drafting and implementing regulations. Congress included a provision in statute for GAO to study these financial services regulations annually.

This annual report examines the extent to which and how financial regulators performed required RFA analyses and established policies and procedures for complying with RFA requirements, among other objectives. GAO reviewed the RFA section of financial regulators' *Federal Register* notices of rulemaking, related internal workpapers, and policies and procedures for conducting RFA analyses. GAO also determined the extent to which regulators' analyses reflected RFA requirements, guidance issued by the Office of Advocacy, and OMB guidance on regulatory analysis. GAO's review covered certifications in 66 final rules and regulatory flexibility analyses in 39 proposed and final rules.

What GAO Recommends

GAO is making a total of 10 recommendations among the six financial regulators reviewed, including that regulators develop and implement specific policies and procedures for consistently complying with RFA requirements and related guidance for conducting RFA analyses. Five agencies generally agreed with the recommendations and one did not provide written comments.

View GAO-18-256. For more information, contact Lawrance Evans, Jr. at 202-512-8678 or evansl@gao.gov.

What GAO Found

To comply with the Regulatory Flexibility Act (RFA), agencies generally must assess the rule's potential impact on small entities and consider alternatives that may minimize any significant economic impact of the rule (regulatory flexibility analyses). Alternatively, agencies may certify that a rule would not have a significant economic impact on a substantial number of small entities. GAO found several weaknesses with the analyses of six financial regulators (Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Securities and Exchange Commission, Commodity Futures Trading Commission, and Consumer Financial Protection Bureau) that could undermine the goal of RFA and limit transparency and public accountability, as shown in the following examples.

- **Certifications.** In certifications for rules that regulators determined may affect small entities, regulators conducted analyses to support their conclusions. GAO found many analyses across all regulators lacked key information the Small Business Administration's Office of Advocacy and the Office of Management and Budget (OMB) recommend. Missing information included discussions of data sources or methodologies, consideration of broader economic impacts of the rulemaking (such as cumulative economic impacts of regulations), and definitions of the criteria regulators used for "substantial number" and "significant economic impact."
- **Regulatory flexibility analyses.** In many of the initial and final regulatory flexibility analyses that GAO reviewed, financial regulators' evaluation of key components required by RFA—potential economic effects and alternative regulatory approaches—was limited. Most regulators (five of six) also did not disclose data sources or methodologies used for their analyses, as OMB recommends. For most rules GAO reviewed, regulators (five of six) were unable to provide documentation supporting their regulatory flexibility analyses, as OMB recommends, including analyses supporting certification decisions. However, the extent of documentation varied by regulator.

Federal internal control standards state the importance for agency management to establish policies and procedures to achieve objectives. All but one of the financial regulators have guidelines that restate RFA requirements for certification and for preparing regulatory flexibility analyses and provide some information on how to approach these analyses. However, these regulators generally have not developed specific policies and procedures to assist staff in complying with RFA, which may contribute to the weaknesses GAO identified in the analyses. For example, regulators' guidance generally did not include procedures for evaluating a rule's potential economic impact; identifying and assessing regulatory alternatives that could minimize impact on small entities; disclosing methodology and data sources; and creating and maintaining documentation that supports findings. By not developing and implementing comprehensive policies and procedures for RFA analyses, regulators' ability to consistently and effectively meet RFA objectives may be limited.