

# GAO Highlights

Highlights of [GAO-15-834T](#), a testimony before the Subcommittee on Regulatory Affairs and Federal Management, Committee on Homeland Security and Governmental Affairs, U.S. Senate

## Why GAO Did This Study

Regulatory guidance is an important tool agencies use to communicate timely information about regulatory and grant programs to regulated parties, grantees, and the public. Guidance provides agencies flexibility to articulate their interpretations of regulations, clarify policies, and address new issues more quickly than may be possible using rulemaking. The potential effects of guidance and risks of legal challenges underscore the need for consistent processes for the development, review, dissemination, and evaluation of guidance.

This statement discusses four key questions addressed in GAO's April 2015 report on regulatory guidance: (1) what it is; (2) how agencies use it; (3) how agencies decide whether to use guidance or undertake rulemaking; and (4) steps agencies can take to ensure more effective guidance processes. To conduct that work, GAO reviewed relevant requirements, written procedures, guidance, and websites, and interviewed agency officials.

## What GAO Recommends

GAO is making no new recommendations in this statement. In the April 2015 report, GAO recommended steps to ensure consistent application of OMB requirements for significant guidance and to strengthen internal controls in guidance production processes. The agencies generally agreed with the recommendations.

View [GAO-15-834T](#). For more information, contact Michelle Sager, (202) 512-6806 or [sagerm@gao.gov](mailto:sagerm@gao.gov).

September 23, 2015

## REGULATORY GUIDANCE PROCESSES

### Agencies Could Benefit from Stronger Internal Control Practices

#### What GAO Found

**What is regulatory guidance?** One of the main purposes of guidance is to explain and help regulated parties comply with agencies' regulations. Even though not legally binding, guidance documents can have a significant effect on regulated entities and the public, both because of agencies' reliance on large volumes of guidance documents and because the guidance can prompt changes in the behavior of regulated parties and the general public.

**How do agencies use regulatory guidance?** The four departments GAO reviewed—Agriculture (USDA), Education (Education), Health and Human Services (HHS), and Labor (DOL)—and the 25 components engaged in regulatory or grant making activities in these departments used guidance for multiple purposes, such as clarifying or interpreting regulations and providing grant administration information. Agencies used many terms for guidance and agency components issued varying amounts of guidance, ranging from about 10 to more than 100 guidance documents each year. 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.

**How do agencies determine whether to issue guidance or undertake rulemaking?** According to officials, agencies considered a number of factors when deciding whether to issue a regulation or guidance. However, the key criterion in making the choice was whether they intended the document to be binding; in such cases agencies proceeded with regulation.

**How can agencies ensure more effective guidance processes that adhere to applicable criteria?** All four departments we studied identified standard practices to follow when developing guidance but could also strengthen their internal controls for issuing guidance.

- Agencies addressed OMB's requirements for significant guidance to varying degrees. Education and USDA had written departmental procedures for approval as required by OMB. DOL's procedures were not available to staff and required updating. HHS had no written procedures. In addition, USDA, DOL, and Education consistently applied OMB's public access and feedback requirements for significant guidance, while HHS did not.
- In the absence of specific government standards for non-significant guidance—the majority of issued guidance—the application of internal controls 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. However, all components could describe standard review practices and most used tools to document management approval of guidance. Not all components conferred with external nonfederal stakeholders when developing guidance. Finally, nearly half of the components GAO reviewed did not regularly evaluate whether issued guidance was effective and up to date.