

GAO Highlights

Highlights of [GAO-25-106950](#), a report to the Chairman of the Committee on Small Business, House of Representatives

Why GAO Did This Study

RFA was enacted in 1980 in response to concerns about the effect of federal regulations on small entities. SBA's Office of Advocacy provides RFA compliance training to federal agencies.

GAO was asked to review agencies' implementation of RFA. This report examines CMS's, Energy's, EPA's, and SBA's RFA analyses for 2022–2023 rules and the extent to which Advocacy has provided RFA training, among other objectives.

GAO selected these agencies because they published the greatest numbers of significant final rules and RFA analyses in fiscal years 2022 and 2023. Collectively, they published 30 percent of significant final rules and 36 percent of analyses. GAO reviewed all 55 proposed rules these agencies certified and all 20 rules that contained initial and final regulatory flexibility analyses. GAO compared these rules and agency policies for conducting RFA analyses against RFA requirements and key practices recommended by Advocacy, OMB, and GAO. GAO also reviewed Advocacy's training activities.

What GAO Recommends

GAO is making six recommendations, including that CMS's, Energy's, and EPA's policies and procedures be revised to more fully incorporate recommended elements; SBA develop RFA compliance procedures; and Advocacy establish procedures for RFA compliance training. Advocacy and HHS agreed, SBA partially agreed, and Energy and EPA neither agreed nor disagreed. GAO maintains that its recommendations should be addressed.

View [GAO-25-106950](#). For more information, contact Jill Naamane at naamanej@gao.gov.

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REGULATORY FLEXIBILITY ACT

Improved Policies for Analysis and Training Could Enhance Compliance

What GAO Found

To comply with the Regulatory Flexibility Act (RFA), agencies generally must conduct regulatory flexibility analysis when promulgating a new rule. This analysis assesses the rule's potential impact on small entities and explores alternatives for minimizing the rule's economic impact. Alternatively, agencies may certify that a rule would not have a significant economic impact on a substantial number of small entities, and that such analysis is therefore not needed. GAO found that in fiscal years 2022 and 2023, federal agencies published 195 significant final rules (e.g., those with a large annual effect on the economy) that were subject to RFA requirements. Agencies certified in 142 instances (73 percent) that the proposed rule would not have a significant impact on a substantial number of small entities.

GAO also found that analyses conducted by the Centers for Medicare & Medicaid Services (CMS), the Department of Energy, the Environmental Protection Agency (EPA), and the Small Business Administration (SBA) generally met statutory requirements. However, the analyses were sometimes inconsistent with recommendations from SBA's Office of Advocacy and key practices from the Office of Management and Budget (OMB) and GAO for conducting regulatory and economic analysis. For example:

- **Certifications.** The certifications GAO reviewed generally met statutory requirements, such as providing a statement of factual basis to support the certification. However, GAO found that several of the analyses supporting the certifications did not include information recommended by Advocacy, such as the rule's potential benefits for small entities or the thresholds used for determining "significant impact" or "substantial number."
- **Regulatory flexibility analyses.** The initial and final regulatory flexibility analyses that GAO reviewed generally met statutory requirements, such as describing and estimating the number of affected small entities. However, the analyses were sometimes inconsistent with recommended practices from Advocacy, OMB, and GAO. For example, some did not disclose their data sources, and none considered the indirect costs of the rule.

Fully incorporating Advocacy guidance and other recommended elements into RFA policies and procedures could help CMS (within the Department of Health and Human Services (HHS)), Energy, and EPA enhance their ability to analyze a rule's economic impact on small entities. Additionally, SBA does not have policies and procedures specific to RFA requirements. Developing such procedures could improve the agency's ability to ensure consistent compliance.

Advocacy is charged with providing training to agencies on RFA compliance, but it has not trained 87 of 181 rulemaking agencies since its training program began in 2003. Further, in fiscal years 2019–2023, 26 of the 41 agencies that Advocacy identified as having deficiencies in their RFA analyses did not receive training. Advocacy does not have formal policies and procedures for its RFA training program, such as methods for identifying all rulemaking agencies or targeting those in need of training. By establishing training policies and procedures, Advocacy could better equip agencies to comply with RFA requirements.