



March 2018

FEDERAL RULEMAKING

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

Accessible Version

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.

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

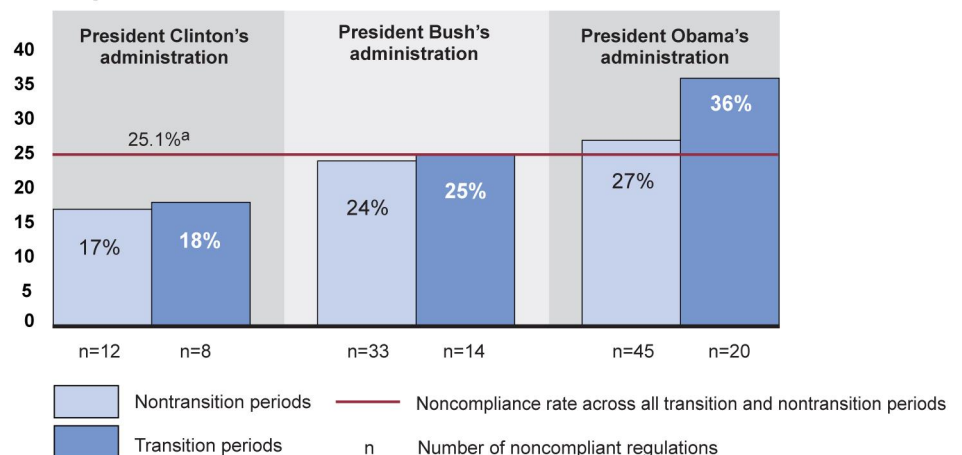
What GAO Found

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

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Abbreviations

APA	Administrative Procedure Act
CRA	Congressional Review Act
CRS	Congressional Research Service
E.O.	Executive Order
EPA	Environmental Protection Agency
HHS	Department of Health and Human Services
Interior	Department of the Interior
NPRM	Notice of Proposed Rulemaking
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
RISC	Regulatory Information Service Center
SBREFA	Small Business Regulatory Enforcement Fairness Act
Transportation	Department of Transportation
UMRA	Unfunded Mandates Reform Act of 1995
XML	Extensible Markup Language

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March 13, 2018

Congressional Committees

Prior studies have indicated that agencies typically issue a larger number of regulations during the transition from the end of one presidential administration to the beginning of the next administration, relative to comparable periods earlier in the administration.¹ This phenomenon is often referred to as “midnight rulemaking.” Officials from outgoing administrations generally attribute this increased regulatory activity to agencies completing long-planned regulatory initiatives. However, the Congressional Research Service (CRS) has noted that some members of Congress and individuals outside the government have expressed concerns that “midnight rules” may be rushed through the analytical and procedural processes agencies are expected to use, providing fewer opportunities for the public to provide input, and therefore resulting in lower quality regulations. CRS has also pointed out that presidential transitions in which party control of the White House changes—which occurred during the four most recent transitions in 1993, 2001, 2009, and 2017—may increase the incentive for Presidents and agencies to engage in midnight rulemaking because it may be difficult for the subsequent administration to change or eliminate regulations after they have taken effect.²

Section 5 of the Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015 includes a provision for us to assess final significant regulatory actions promulgated by executive departments during specified presidential transition periods and to analyze and compare multiple characteristics of regulations issued during these transition periods to each other and to regulations issued during the same 120-day periods in nontransition years since 1996.³ The transition

¹The Congressional Research Service, “Midnight Rulemaking: Background and Options for Congress,” (Washington, D.C.: Oct. 4, 2016). In 2012, a report on this topic was prepared for the consideration of the Administrative Conference of the United States: Jack M. Beermann, *Midnight Rules: A Reform Agenda*, Administrative Conference of the United States, May 14, 2012.

²The Congressional Research Service, “Can a New Administration Undo a Previous Administration’s Regulations?” (Washington, D.C.: Nov. 21, 2016). See also the October 2016 CRS report on midnight rulemaking.

³Pub. L. No. 114-136, § 5 130 Stat. 301, 307–308 (2016).

periods identified in the act are those ending on January 20 in 2001, 2009, and 2017, which occurred at the end of the administrations of Presidents Clinton, Bush, and Obama. For the transition periods, and among these transition periods and the same 120-day periods in nontransition years, our objectives were to assess the extent to which there were variations in (1) the number of regulations and other indicators related to the scope and transparency of these regulations; (2) agencies' reported compliance with procedural requirements for promulgating the regulations; and (3) the anticipated economic effects agencies reported would result from the regulations.

For each of the three transition periods and the 18 other periods cited in the mandate, we reviewed what the act defines as "covered regulations" published by executive agencies in the *Federal Register*. For purposes of this review, executive agencies are those cabinet departments and other agencies that answer directly to the President and exclude the independent regulatory agencies.⁴ The definition of a "covered regulation" in the mandate is the same as the definition of a final significant regulatory action under Executive Order (E.O.) 12866.⁵ Under E.O. 12866, the Office of Management and Budget (OMB) reviews significant proposed and final regulations from all federal agencies (other than independent regulatory agencies) before they are published in the *Federal Register*. The order defines significant regulatory actions as those that are likely to result in a rule that may

1. Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (generally referred to as "economically significant" regulations);
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

⁴"Independent regulatory agencies" are the boards and commissions identified as such in the Paperwork Reduction Act, such as the Securities and Exchange Commission. 44 U.S.C. § 3502(5).

⁵Executive Orders 13563, 13771, and 13777 subsequently reaffirmed E.O. 12866. Exec. Order No. 12866, *Regulatory Planning and Review*, 58 Fed. Reg. 51,735 (Oct. 4, 1993); Exec. Order No. 13563, *Improving Regulation and Regulatory Review*, 76 Fed. Reg. 3821 (Jan. 21, 2011); and Exec. Order No. 13771, *Reducing Regulation and Controlling Regulatory Costs*, 82 Fed. Reg. 9339 (Feb. 3, 2017); and Exec. Order No. 13777, *Enforcing the Regulatory Reform Agenda*, 82 Fed. Reg. 12,285 (Mar. 1, 2017).

3. Materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising from legal mandates, the President's priorities, or the principles set forth in the executive order.

For the purposes of this report, we differentiate between the results for “economically significant” regulations (criterion 1 above, i.e., generally those with annual economic effects greater than \$100 million) and the results for other significant regulations (criteria 2-4 above, i.e., those expected to have less than \$100 million in economic effects but are deemed significant under the order’s other three definitions of significance). We will refer to the latter category as “significant regulations.” We primarily relied on OMB’s Reginfo.gov database on regulations reviewed under E.O. 12866 to compile a list of final economically significant and final significant regulations published during the specified periods.⁶ We refined and supplemented the lists from the Reginfo.gov database with information from our database on rules submitted to us under the Congressional Review Act (CRA), and the Government Printing Office’s Federal Digital System database on the *Federal Register*.⁷ To test the reliability of these databases, we reviewed relevant documentation, interviewed knowledgeable agency officials, looked for missing data and outliers (for example, by identifying missing records or those included in error), traced a sample of entries to source documents, and conducted additional checks. We concluded that the data were sufficiently reliable for our purposes.

We reviewed the universe of all 527 final economically significant regulations published during the specified periods and a generalizable stratified random sample of 358 final significant regulations from the population of 1,633 final significant regulations published during the specified periods. For economically significant regulations, we can provide precise statistics on the extent of a finding, because we reviewed the universe. For significant regulations, our findings are based upon a sample designed to achieve a margin of error no greater than plus or

⁶See <https://www.reginfo.gov/public/jsp/EO/eoDashboard.jsp>.

⁷CRA generally requires agencies to submit rules to both Houses of Congress and the U.S. Comptroller General before the rules can become effective. 5 U.S.C. § 801(a)(1)(A). The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration containing legal documents and notices pertaining to federal agencies, including rules and regulations.

minus 7 percentage points at the 95 percent level of confidence for each presidential transition period and the nontransition periods combined. Our findings for the sample are generalizable for the population of all covered significant regulations published in each transition period and, collectively, all nontransition periods, but are not generalizable to the individual agencies that published those regulations.

To assess the number of regulations and other variations related to the scope and transparency of these regulations, we tallied total numbers of final regulations published during each specified period. We identified whether the regulations were economically significant or significant, and which agencies had published the regulations to assess scope. We also reviewed other indicators, such as whether the final regulation had a prior proposed rule and whether the agency had provided advanced notice that the regulation was being developed in the Unified Agenda, to provide insights on the type of rulemaking procedures that agencies used and the transparency of those rulemakings.

To assess variations in agencies' compliance with procedural requirements and the anticipated economic effects of regulations, we reviewed the published text of the regulations and, for regulations that were also major rules, the reports that we prepared for Congress under CRA.⁸ We reviewed agencies' reported compliance with procedural requirements for promulgating regulations under five statutes—CRA, the Regulatory Flexibility Act (RFA), the Paperwork Reduction Act (PRA), the Unfunded Mandates Reform Act of 1995 (UMRA), and the Small Business Regulatory Enforcement Fairness Act (SBREFA). We also reviewed the published regulations to see whether agencies identified expected economic effects (benefits, costs, and transfers).⁹ Consistent with our prior governmentwide review of regulations, we did not evaluate the agencies' decisions regarding procedural requirements or their determinations regarding the potential effects of their regulations. Instead, we are providing information about what the agencies published in the

⁸A major rule is one that, among other things, has resulted in or is likely to result in an annual effect on the economy of \$100 million or more. This is similar, but not identical to, the definition of an economically significant rule under E.O. 12866. The background section of this report provides further explanation.

⁹Office of Management and Budget, *Circular A-4: Regulatory Analysis*, (Washington, D.C.: 2003). According to Circular A-4, "transfer" regulations primarily involve monetary payments from one group in society to another and do not affect total resources available to society.

Federal Register. Appendix I contains more information on our objectives, scope, and methodology.

We conducted this performance audit from May 2016 to March 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Federal agencies implement specific elements of laws through regulations, which typically require or prohibit certain actions. Congresses and Presidents have required agencies to comply with multiple procedural and analytical requirements prior to issuing regulations.

- **Administrative Procedure Act (APA).**¹⁰ APA established the basic framework of administrative law governing federal agency action, including rulemaking. Before promulgating a regulation, agencies are generally required to publish a notice of proposed rulemaking (NPRM) in the *Federal Register* and take comments concerning the proposed rule. However, agencies may issue final rules without the use of an NPRM in certain cases, including when the agency determines for “good cause” that notice and comment procedures are “impracticable, unnecessary, or contrary to the public interest.”¹¹ Further, Congress sometimes enacts laws that direct an agency to issue regulations without notice and comment.¹²
- **Regulatory Flexibility Act.**¹³ RFA was enacted in response to concerns about the effect that federal regulations can have on small entities. RFA requires agencies to consider the impact of their

¹⁰Pub. L. No. 404, 60 Stat. 237, ch. 324, §§ 1-12 (1946), *codified as amended at* 5 U.S.C. §§ 551-559, 701-706, 1305, 3105, 3344, 5372, 7521.

¹¹5 U.S.C. § 553(b)(B).

¹²See, GAO, *Federal Rulemaking: Agencies Could Take Additional Steps to Respond to Public Comments*, [GAO-13-21](#) (Washington, D.C.: Dec. 20, 2012).

¹³Pub. L. No. 96-354, 94 Stat. 1164 (1980), *codified as amended at* 5 U.S.C. §§ 601-612.

regulations on small entities and to prepare regulatory flexibility analyses, unless the head of the agency certifies that the rule would not have a “significant economic impact upon a substantial number of small entities.”¹⁴

- **Paperwork Reduction Act.**¹⁵ PRA was enacted to help minimize the burden that federal information collections (e.g., forms, surveys, or questionnaires) impose on the public, while maximizing their public benefit. PRA requires agencies to provide public notice, solicit comments, and request approval by OMB before imposing new information collection requirements.
- **Unfunded Mandates Reform Act of 1995.**¹⁶ UMRA was enacted to address concerns about federal statutes and regulations that require nonfederal parties to expend resources to achieve legislative goals without being provided funding to cover the costs. Among other things, UMRA generally requires federal agencies to prepare a written statement containing a “qualitative and quantitative assessment of the anticipated costs and benefits” for any rule that includes a federal mandate that may result in the expenditure of \$100 million or more in any 1 year by state, local, and tribal governments in the aggregate, or by the private sector.¹⁷
- **Small Business Regulatory Enforcement Fairness Act.**¹⁸ Under SBREFA, the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) are required to convene Small Business Review Panels (also known as SBREFA panels) for rulemaking efforts that are expected to have a significant economic impact on a substantial number of small entities.¹⁹ These

¹⁴5 U.S.C. §§ 603, 604.

¹⁵PRA was originally enacted into law in 1980. Pub. L. No. 96-511, 94 Stat. 2812 (1980). It was reauthorized with minor amendments in 1986, and was reauthorized a second time with more significant changes in 1995, Pub. L. No. 99-591, 100 Stat. 3341 (1986); Pub. L. No. 104-13, 109 Stat. 163 (1995). 44 U.S.C. §§ 3501-3520.

¹⁶Pub. L. No. 104-4, 109 Stat. 48 (1995), *codified in* scattered sections of title 2 of the United States Code.

¹⁷The dollar thresholds in UMRA are in 1996 dollars and are adjusted annually for inflation.

¹⁸Pub. L. No. 104-121, § 244, 110 Stat. 847, 867–868 (1996).

¹⁹Later, the Dodd-Frank Wall Street Reform and Consumer Protection Act imposed the requirement for convening SBREFA panels on the Consumer Financial Protection Bureau, an independent regulatory agency not covered by this report.

panels are intended to seek direct input early in the rulemaking process from small entities that would be impacted by the rulemakings.

- **Congressional Review Act.**²⁰ CRA was enacted to better ensure that Congress has an opportunity to review and possibly disapprove regulations, in certain cases, before they become effective. CRA established expedited procedures by which Congress may disapprove agencies' regulations by introducing a resolution of disapproval that, if adopted by both Houses of Congress and signed by the President, can nullify an agency's action. CRA states that an agency may not reissue the regulation in "substantially the same form," as a regulation Congress disapproved. CRA requires us to provide Congress with a report on rules OMB's Office of Information and Regulatory Affairs (OIRA) determines to be major rules, including our assessment of the issuing agency's compliance with the procedural steps required by various acts and executive orders governing the rulemaking process.²¹ CRA's definition of a major rule is similar to E.O. 12866's definition of economically significant rules, and generally, economically significant regulations are classified for purposes of CRA as major rules and significant regulations are classified as nonmajor rules.²² CRA generally provides Congress time to review major rules before those rules take effect.
- **Executive Orders and Relevant Guidance.** In addition to the statutory requirements described above, executive agencies must also follow requirements Presidents have set in executive orders and related guidance:
 - **Role of OIRA:** Under E.O. 12866, issued in 1993, OIRA reviews regulations deemed significant. The Administrator of OIRA is responsible for providing meaningful guidance and oversight with respect to regulatory planning and review to the extent permitted

²⁰Pub. L. No. 104-121, § 251, 110 Stat. 847, 868–874 (1996), *codified at* 5 U.S.C. §§ 801–808.

²¹5 U.S.C. § 801(a)(2)(A).

²²Major and economically significant rules are subject to the same \$100 million economic effect threshold, but vary in that the definition of major is broader than that of economically significant. Rules that may be designated as major under CRA but not economically significant under E.O. 12866 include those that would have a significant adverse effect on the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets.

by law. Further, the order states that OIRA is to be the repository of expertise concerning regulatory issues.

- **Role of agencies and assessment of costs and benefits:** Among other things, under E.O. 12866 agencies are responsible for developing regulations and assuring that the regulations are consistent with applicable law. The order also requires agencies to prepare an agenda of all regulations under development or review. For economically significant regulations, E.O. 12866 requires agencies to provide to OIRA (unless prohibited by law) an assessment, including the underlying analysis, of the costs and benefits anticipated from the regulatory action and feasible alternatives. For significant regulations, E.O. 12866 requires agencies to provide to OIRA an assessment of the potential costs and benefits anticipated from the planned regulatory action. Circular A-4, published in 2003, provides guidance to agencies on how to conduct the required analysis and, among other things, directs agencies to estimate the costs and benefits of a regulation and “transfer” payments that may result from the regulation.²³ Transfer regulations redistribute income from (usually) taxpayers to program beneficiaries (e.g., Medicare recipients), but generally do not result in economic benefits or costs.

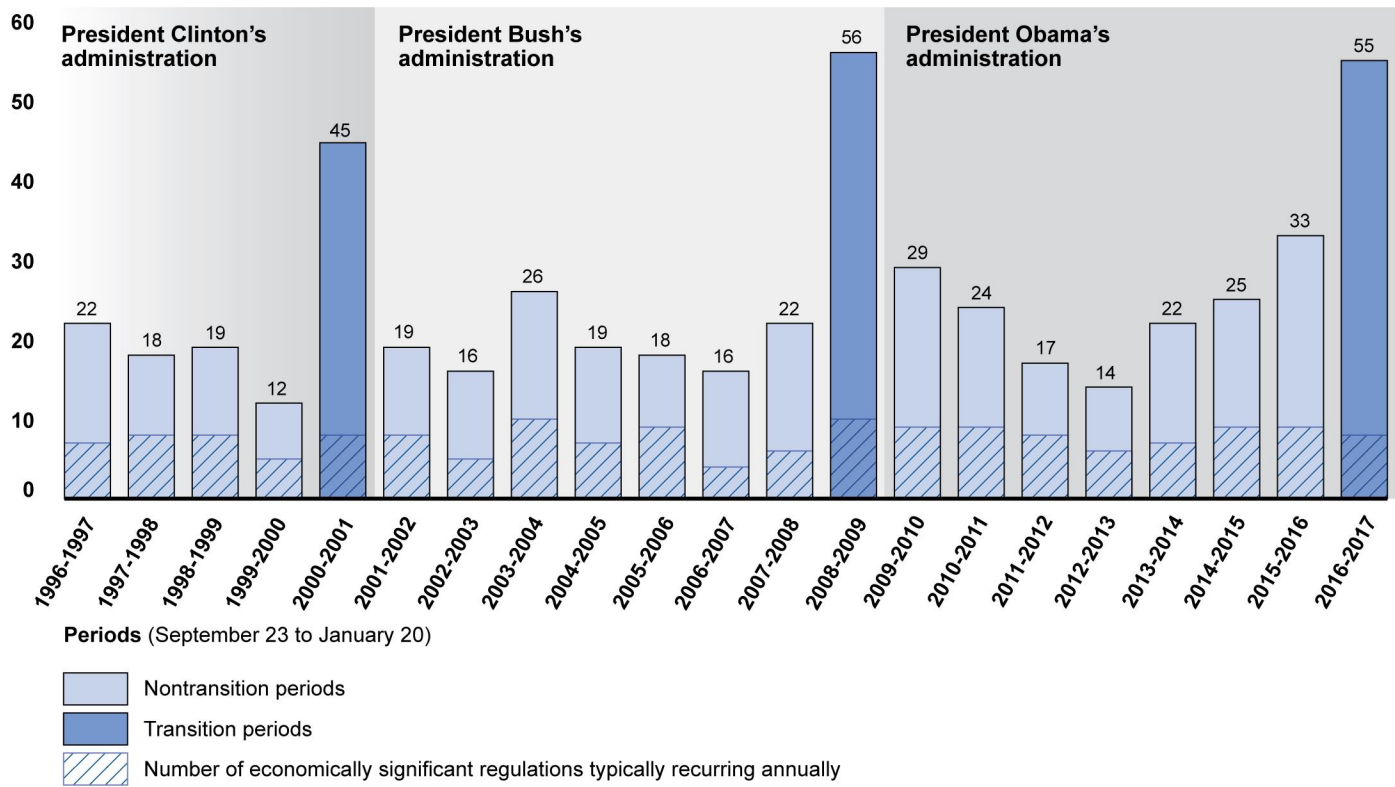
Agencies Published More Final Regulations and More Frequently Provided Advanced Notice to the Public during Transition Periods

The three administrations published a higher number of economically significant and significant final regulations at the end of each President’s second term compared to the nontransition periods. (See figures 1 and 2.) The administrations published on average roughly 2.5 times more economically significant regulations during their transition periods than during nontransition periods.

²³With Circular A-4, OMB replaced both its guidance (2000) and “best practices” (1996) on how to conduct economic analysis.

Figure 1: Number of Final Economically Significant Regulations Published during Specified Transition and Nontransition Periods, 1996-2017

Number of economically significant regulations published

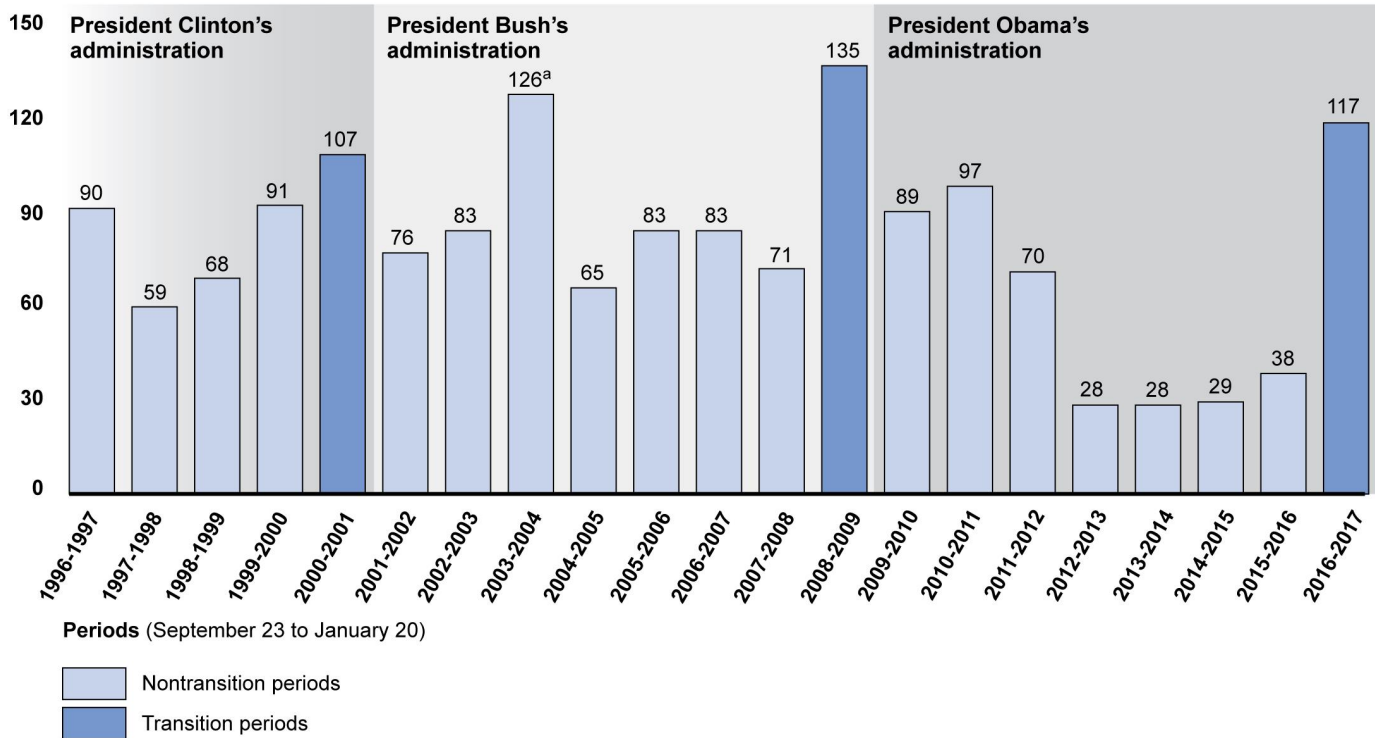


Source: GAO analysis of published regulations. | GAO-18-183

Note: Agencies typically publish a subset of economically significant regulations every calendar year during the autumn and early winter months, irrespective of whether a President is preparing to leave office. For example, the Department of the Interior updated regulations concerning hunting for migratory birds on federal and tribal lands during 18 of the 21 periods reviewed.

Figure 2: Number of Final Significant Regulations Published during Specified Transition and Nontransition Periods, 1996-2017

Number of final significant regulations published



Source: GAO analysis of data from Reginfo.gov on the number of draft significant regulations submitted to the Office of Information and Regulatory Affairs for review. | GAO-18-183

^aFor the 2003-2004 period, 34 agencies submitted separate draft regulations to the Office of Information and Regulatory Affairs concerning government-wide debarment and suspension and requirements for drug-free workplaces, but these agencies published one final regulation on this topic. The data we used for this figure counted this regulation 34 times instead of just once.

Our analysis also showed that within their transition periods (September 23 through January 20), the administrations of Presidents Clinton and Obama increased their rate of economically significant rulemaking following the elections held in 2000 and 2016 (between Election Day in November and January 20), while President Bush's administration decreased the rate of economically significant rulemaking following the 2008 election. (See appendix II.)

Economically Significant Regulations Published in Both Transition and Nontransition Periods Were Concentrated in Certain Agencies

We found that the majority of economically significant regulations were published by a subset of agencies across the three administrations and between transition and nontransition periods. In particular, the Department of Health and Human Services (HHS) published one-third of the economically significant regulations we reviewed across all periods and was the most active agency in both transition and nontransition periods. (See table 1.) For example, the Centers for Medicare & Medicaid Services typically published regulations every calendar year describing reimbursement rates for medical providers serving Medicare patients.

Table 1: Agencies Publishing the Largest Number of Final Economically Significant Regulations during Specified Transition and Nontransition Periods, 1996-2017

<i>Transition Periods</i>			<i>Nontransition Periods</i>		
(3 120-day periods spanning September 23 to January 20 of 2000-2001, 2008-2009, and 2016-2017)			(18 120-day periods spanning September 23 to January 20)		
Agency	Number of Regulations	Percentage of Regulations	Agency	Number of Regulations	Percentage of Regulations
Health and Human Services	46	29%	Health and Human Services	131	35%
Agriculture	18	12%	Interior	44	12%
Environmental Protection Agency	14	9%	Agriculture	34	9%
Interior	12	8%	Environmental Protection Agency	31	8%
Transportation	11	7%	Transportation	21	6%
Labor	11	7%	NA	NA	NA
Other Agencies	44	28%	Other Agencies	110	30%
Total	156	100%	Total	371	100%

Source: GAO analysis of published regulations. | GAO-18-183

For significant regulations, HHS was the most active agency during both transition and nontransition periods. (See table 2.)²⁴ However, significant rulemaking was less concentrated in a subset of agencies than was

²⁴Our sample was not designed to provide estimates of significant regulations published by individual agencies during individual transition periods and the nontransition periods. Thus, we used data from Reginfo.gov to identify the most active agencies.

economically significant rulemaking. Specifically, five of the agencies that published the largest number of economically significant regulations accounted for between 65 and 70 percent of these regulations during both transition and nontransition periods, while the five agencies that published the largest number of significant regulations accounted for 42 percent of these regulations during both transition and nontransition periods.²⁵

Table 2: Agencies Publishing the Largest Number of Final Significant Regulations during Specified Transition and Nontransition Periods, 1996-2017

<i>Transition Periods</i> (3 120-day periods spanning September 23 to January 20 of 2000-2001, 2008-2009, and 2016-2017)			<i>Nontransition Periods</i> (18 120-day periods spanning September 23 to January 20)		
Agency	Number of Regulations	Percentage of Regulations	Agency	Number of Regulations	Percentage of Regulations
Health and Human Services	39	11%	Health and Human Services	138	11%
Environmental Protection Agency	32	9%	Environmental Protection Agency	122	10%
Agriculture	32	9%	Agriculture	100	8%
Office of Personnel Management	26	7%	Office of Personnel Management	84	7%
Labor	23	6%	Transportation	77	6%
Other Agencies	207	58%	Other Agencies	753	59%
Total	359	100%	Total	1274	100%

Source: GAO analysis of data from Reginfo.gov on the number of draft significant regulations submitted to the Office of Information and Regulatory Affairs for review. | GAO-18-183

Note: Some percentages do not add up to 100 percent due to rounding.

For Economically Significant Regulations, Agencies More Frequently Provided Advanced Notice to the Public during Transition Periods

To provide perspective on the transparency of regulatory activity and the types of rulemaking procedures agencies used during transitions, we examined two indicators: 1) whether regulations were advertised in the

²⁵For economically significant regulations published during transition periods, we included Labor in Table 1 because it published the same number of regulations as Transportation, but we excluded Labor from the calculation presented above to allow for consistent comparisons. For more information about the most active agencies during individual administrations for economically significant and significant regulations, see appendix II.

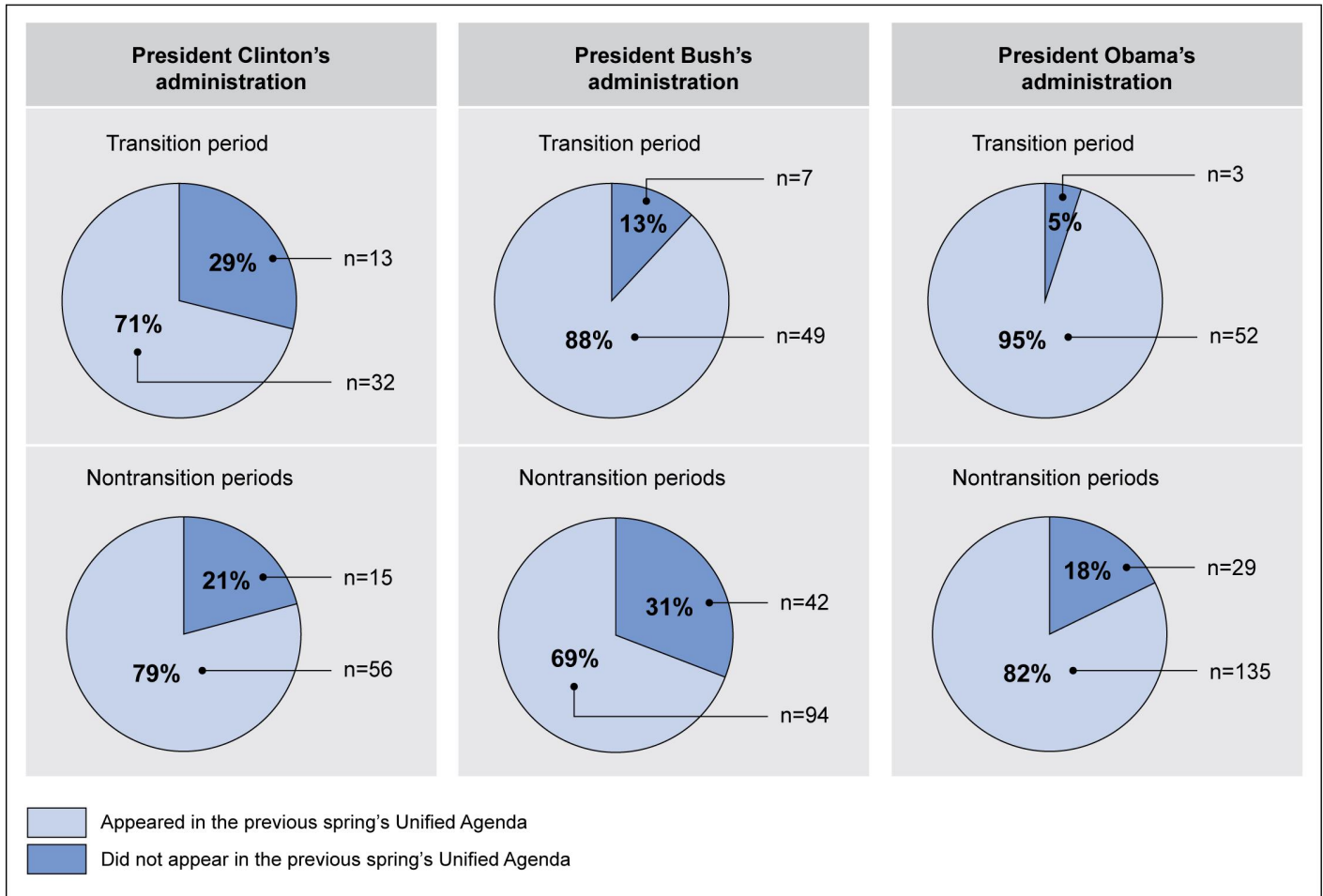
previous spring's Unified Agenda and 2) whether the final regulation was preceded by a proposed rule or NPRM:

- **Prior Appearance in the Unified Agenda:** The semi-annual Unified Agenda was established by E.O. 12866 and provides uniform reporting of data on those regulatory and deregulatory activities under development or review throughout the federal government. By including a planned regulation in the previous spring's Unified Agenda, policy makers provided members of the public with several months of notice before a final regulation was published during any of the transition or nontransition periods.²⁶
- **Notice of Proposed Rulemaking:** The notice and comment process was established by the APA and gives the public an opportunity to provide information to agencies on the potential effects of a regulation or to suggest alternatives for agencies to consider before the agency publishes the final regulation. By publishing an NPRM, policy makers provided members of the public with an opportunity to influence the development of the regulation.

Overall, we found that agencies more frequently provided advanced notice of regulations to the public during transition periods by announcing planned activities in the Unified Agenda and publishing NPRMs. A higher percentage of economically significant regulations appeared in the previous spring's Unified Agenda during Presidents Bush's and Obama's transition periods compared to nontransition periods. (See figure 3.) President Clinton's administration published a smaller percentage of regulations in the Unified Agenda during its transition period compared to its nontransition periods. This decrease is explained by the Department of the Interior (Interior) and HHS not entering four regulations they typically update each year into the spring 2000 Unified Agenda pertaining to migratory bird hunting and Medicare.

²⁶We do not provide the precise number of months because the Unified Agenda has been published at different times during the spring and the regulations reviewed were published between September 23 and January 20 of the following calendar year. The Unified Agenda can be accessed at <https://www.reginfo.gov/public/do/eAgendaMain>.

Figure 3: Final Economically Significant Regulations Appearing in the Previous Spring's Unified Agenda during Specified Transition and Nontransition Periods, 1996-2017



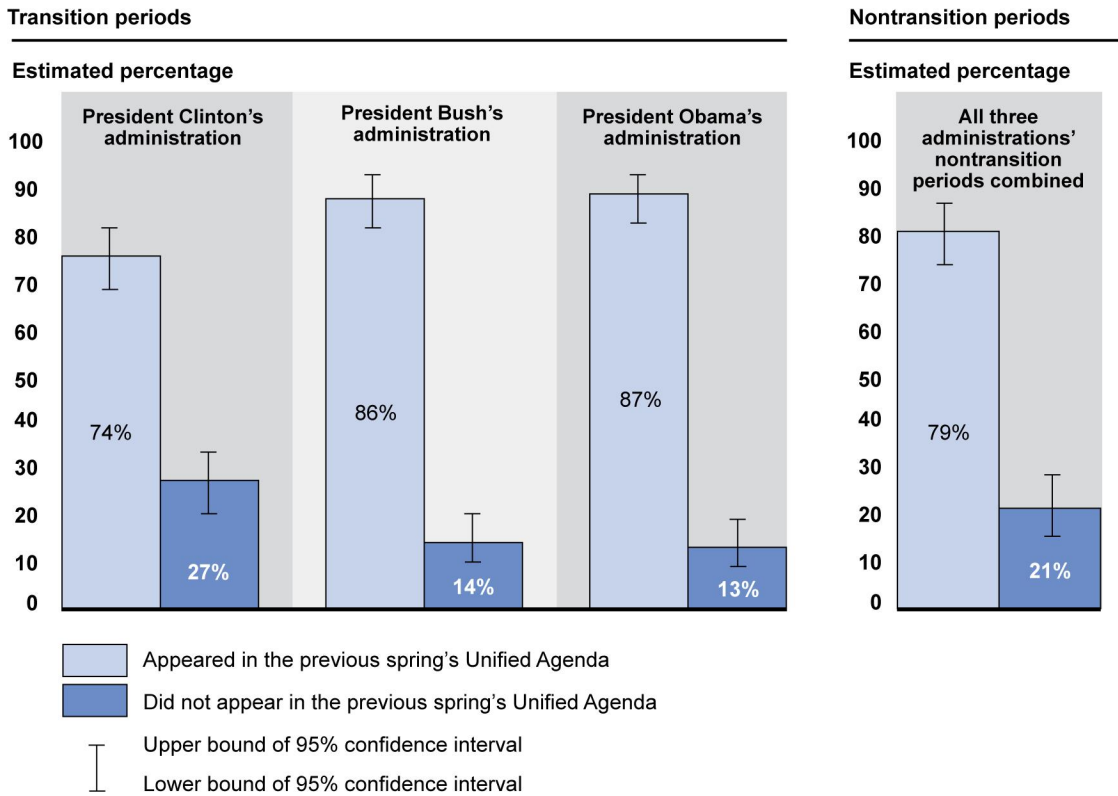
Source: GAO analysis of published regulations and data from Reginfo.gov. | GAO-18-183

Notes: Because no Unified Agenda was published in the spring of 2012, we used the Unified Agenda published in the fall of 2011 as an indicator of advanced notice of the regulations published during the 2012-2013 nontransition period.

Some percentages do not add up to 100 percent due to rounding.

For significant regulations, we estimate that a higher percentage of regulations published during Presidents Bush's and Obama's transition periods appeared in the previous spring's Unified Agenda compared to President Clinton's transition period. However, we found no statistical differences between the nontransition periods combined and any of the three transition periods. (See figure 4.)

Figure 4: Final Significant Regulations Appearing in the Previous Spring’s Unified Agenda during Specified Transition and Nontransition Periods, 1996-2017



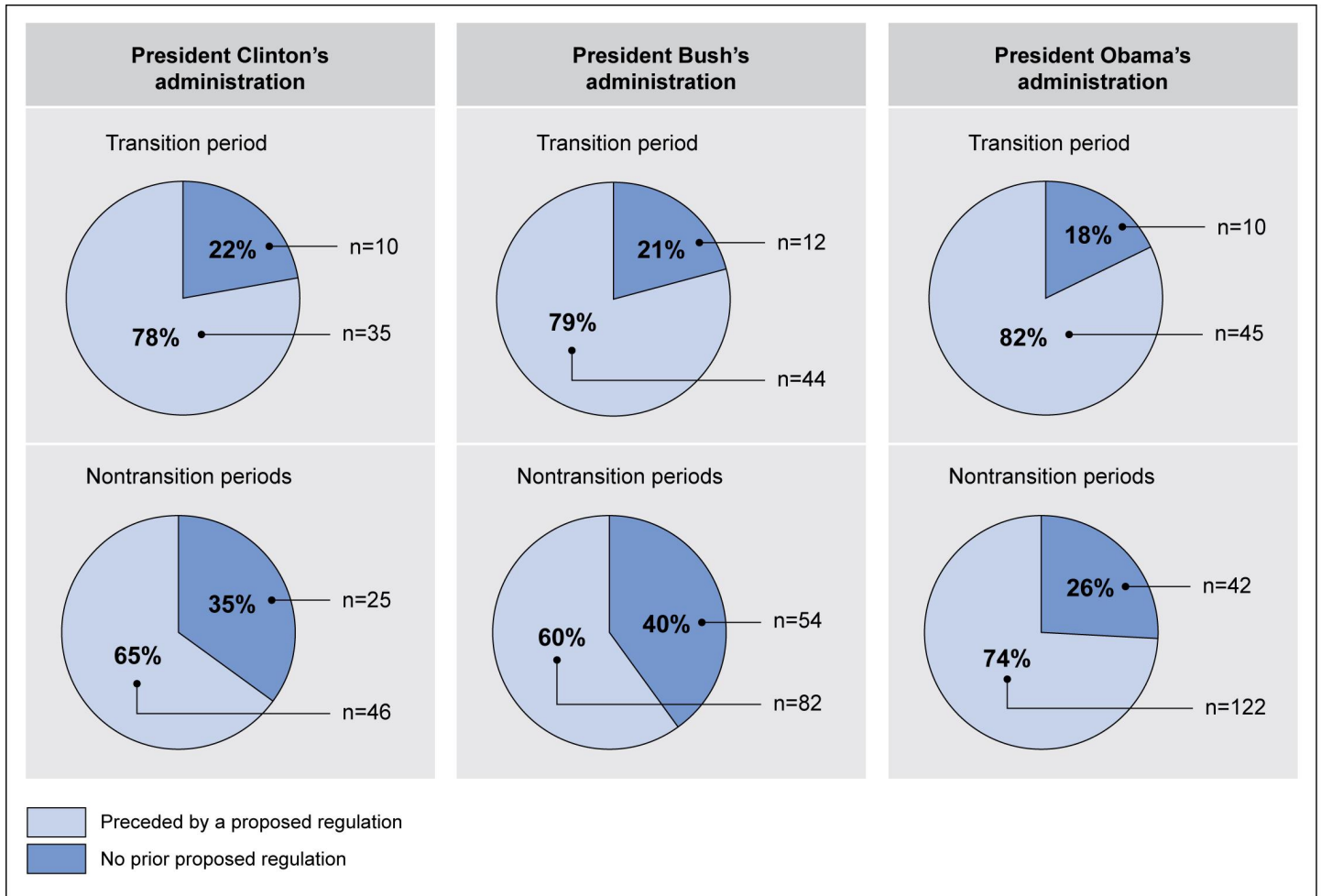
Source: GAO analysis of published regulations and data from Reginfo.gov. | GAO-18-183

Notes: Some percentages do not add up to 100 percent due to rounding.

Because no Unified Agenda was published in the spring of 2012, we used the Unified Agenda published in the fall of 2011 as an indicator of advanced notice of the regulations published during the 2012-2013 nontransition period.

Across all three administrations, economically significant regulations published during transition periods were more often preceded by proposed regulations compared with those published during nontransition periods. (See figure 5.)

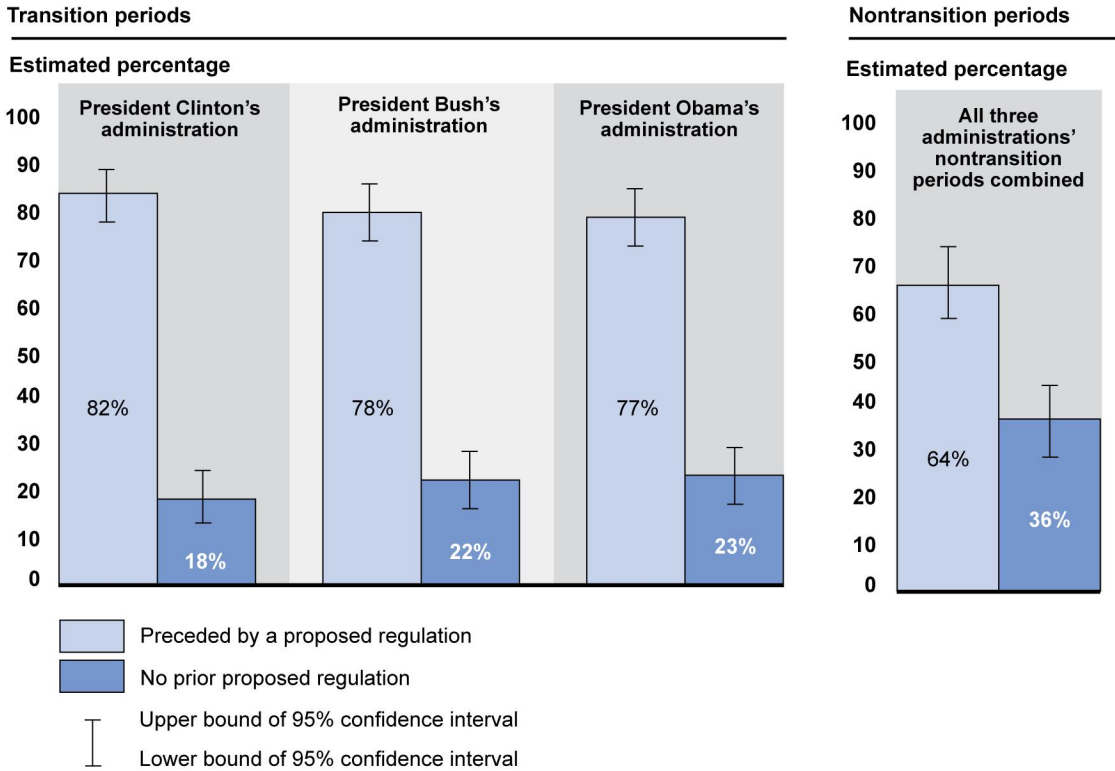
Figure 5: Final Economically Significant Regulations Preceded by a Notice of Proposed Rulemaking during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of published regulations. | GAO-18-183

We estimated that significant regulations published during Presidents Clinton's and Bush's transition periods were more often preceded by proposed regulations than significant regulations published during nontransition periods. However, we found no statistical differences between President Obama's transition period and the other transition and nontransition periods. (See figure 6.)

Figure 6: Final Significant Regulations Preceded by a Notice of Proposed Rulemaking during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of published regulations. | GAO-18-183

Nearly All Economically Significant Regulations Reported to the Public Compliance with Four Procedural Requirements, but a Quarter Did Not Comply with the Congressional Review Act

Agencies Reported to the Public that They Complied with Four Procedural Requirements for Nearly All Economically Significant Regulations and the Majority of Significant Regulations

Regulatory Flexibility Act (RFA), Paperwork Reduction Act (PRA), and the Unfunded Mandates Reform Act of 1995 (UMRA): We found that 91 percent of economically significant regulations across all periods reviewed explained to the public the determinations the agencies made regarding these three procedural requirements. Further, there was little difference between transition and nontransition periods in whether agencies provided explanation of these three procedural requirements.²⁷ For the regulations that did contain explanation, agencies indicated that more economically significant regulations published during transition periods than in nontransition periods: (1) would not have a significant impact on a substantial number of small entities (RFA), (2) contained information collection requirements on nonfederal entities (PRA), and (3) generally could impose federal mandates on nonfederal entities (UMRA). For significant regulations, we estimate that 64 percent across all periods reviewed provided explanation to the public of the determinations the agencies made regarding these three procedural requirements.²⁸ More specific information about the determinations agencies reached is presented in appendix II.

For economically significant and significant regulations that did not contain explanations of one or more of these procedural requirements, this does not necessarily indicate noncompliance by the agency. An agency may not need to address a particular procedural requirement if

²⁷For the transition periods combined, this was 93 percent. For the nontransition periods combined, this was 90 percent.

²⁸Our 95 percent confidence interval for the estimate provided above was between 59 and 70 percent.

the substance of the rule or exceptions and thresholds in the requirement lead the agency to determine that a specific regulation did not trigger the requirement. For example, regulations that were significant but not economically significant under E.O. 12866 would not be expected to contain a federal mandate that would result in the expenditure of \$100 million or more in any 1 year, so would not trigger the requirement for an UMRA written statement.²⁹

Small Business Regulatory Enforcement Fairness Act (SBREFA): EPA and OSHA reported holding small business review panels for 16 economically significant regulations reviewed, and we confirmed that the proceedings of all but one of these panels had been documented on the Small Business Administration's website.³⁰ EPA also reported holding a small business review panel for one of the significant regulations we reviewed, and we confirmed that this proceeding also had been documented.

²⁹See GAO, *Federal Mandates: Few Rules Trigger Unfunded Mandates Reform Act*, [GAO-11-385T](#) (Washington, D.C.: Feb. 15, 2011).

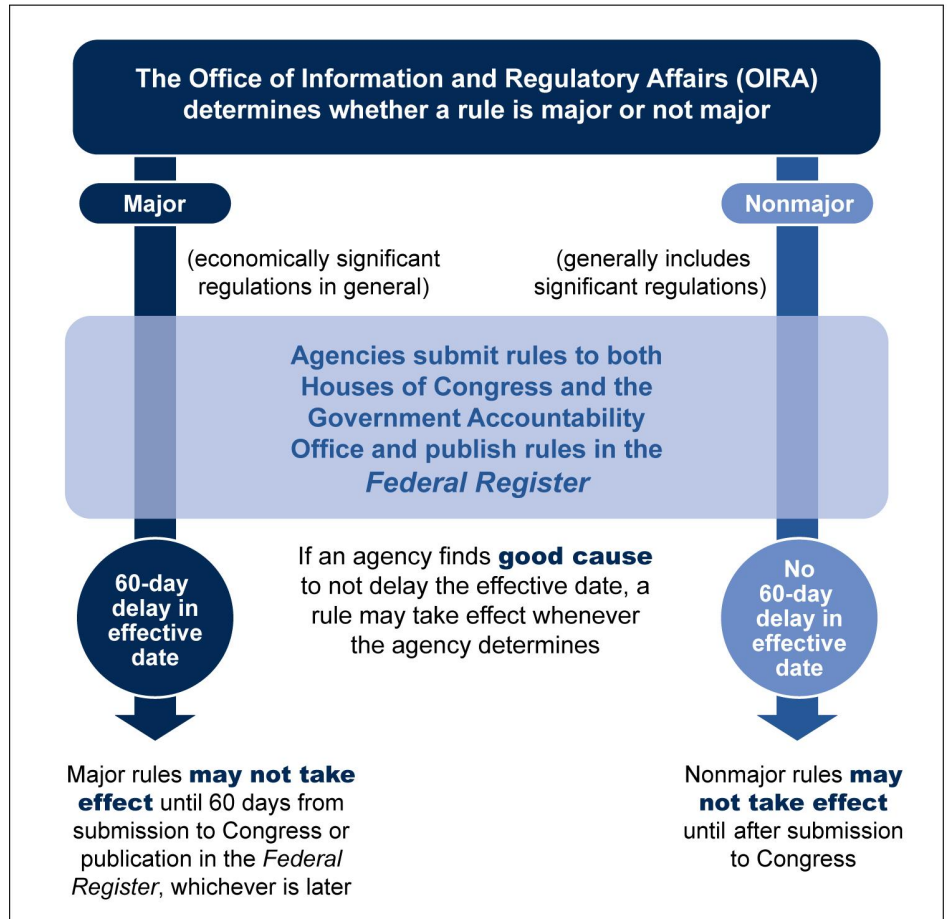
³⁰The exception was an EPA regulation published on December 1, 2009. The agency reported that it had voluntarily convened a panel, but did not complete the panel process. The agency certified that the regulation would not have a significant economic impact on a substantial number of small entities.

Over 25 Percent of Economically Significant Regulations and an Estimated 15 Percent of Significant Regulations Did Not Comply with the Congressional Review Act

CRA requires agencies to submit regulations to Congress and to us and to delay the effective date of certain regulations in order to provide Congress an opportunity to review and possibly disapprove of regulations before they become effective. We reviewed agencies' compliance with the requirements to: (1) submit the regulation to Congress and to us, (2) provide the required delay between submission of the regulation to Congress and us and its effective date, and (3) provide the required delay between publication of the regulation and its effective date.³¹ See figure 7 for these requirements regarding delays in effective dates.

³¹See Appendix I for a more specific explanation of how we did the analysis.

Figure 7: Delay in Effective Date Requirements under the Congressional Review Act (CRA)



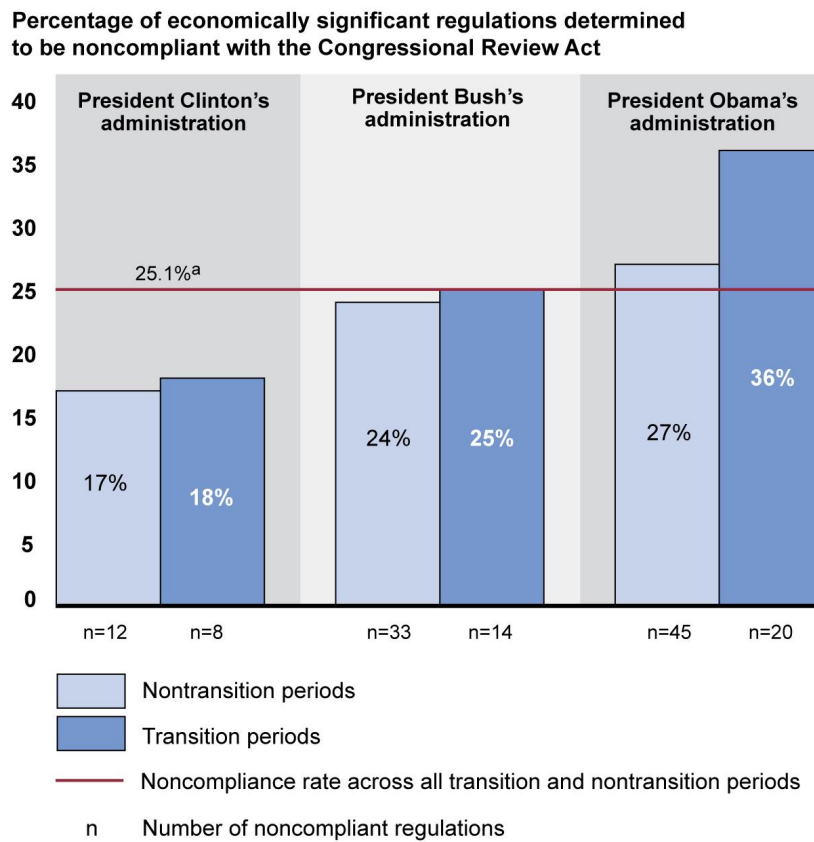
Source: GAO analysis of the Congressional Review Act. | GAO-18-183

Note: Generally, major rules are those with an annual effect on the economy of \$100 million or more, which is similar to the definition of economically significant rules under Executive Order 12866.

Our analysis determined that 132 of the 527 economically significant regulations across all periods reviewed failed to meet at least one of the requirements described above, and none of these regulations included

agencies claiming “good cause,” which would have allowed them to delay the effective date. (See figure 8.)³²

Figure 8: Final Economically Significant Regulations Determined to be Noncompliant with the Congressional Review Act during Specified Transition and Nontransition Periods, 1996-2017



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

^aThe noncompliance rate across all three transition periods combined was 26.9 percent, compared to 24.3 percent during all nontransition periods combined.

We found that noncompliance for economically significant regulations was primarily associated with agencies’ failure to delay the effective date of

³²Twenty-five economically significant regulations across all periods reviewed were submitted to us as nonmajor rules and our analysis recognized that there is no 60-day delay requirement for these; nonmajor rules may take effect after submission to Congress. For more information, see appendix I.

their regulations, while the failure to submit regulations to Congress and us accounted for a smaller proportion of the deficiencies.³³ Of the 132 noncompliant economically significant regulations:

- 95 did not provide the required delay between the submission of the regulation to Congress and us and the effective date.³⁴ Further, agencies generally missed the deadline by more than 5 days (70 of 92 regulations).³⁵ It is our practice to alert the relevant congressional committees when we observe this particular deficiency in our major rule reports.³⁶ Further, we also reported to Congress in 2007 that there appeared to be a broader pattern of noncompliance with this requirement, noting: “A consistent difficulty in implementing CRA has been the failure of some agencies to delay the effective date of major rules for 60 days as required by CRA.”³⁷
- 74 did not provide the required delay between publication in the *Federal Register* and the effective date.³⁸ Once again, agencies generally missed this deadline by more than 5 days (62 of 74 regulations). It is our practice to alert the relevant congressional committees when we observe this particular deficiency in our major rule reports.³⁹

³³Our analysis accounted for the different delay requirements for major and nonmajor rules.

³⁴For regulations that appeared potentially noncompliant based on the date submitted to us, we checked the *Congressional Record* to see if the regulation had been submitted to at least one House of Congress within the required timeframe.

³⁵Three of the 95 noncompliant regulations were nonmajor rules.

³⁶For example, see GAO, *Department of Transportation, National Highway Traffic Safety Administration: Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles*, [B-329527](#) (Washington, D.C.: Nov. 2, 2017).

³⁷GAO, *Congressional Review Act*, [GAO-08-268T](#) (Washington, D.C.: Nov. 6, 2007).

³⁸The subtotals for these two deficiencies are larger than the total number of noncompliant regulations because some noncompliant regulations had both deficiencies.

³⁹For example, see GAO, *Department of Transportation, Federal Motor Carrier Safety Administration: Commercial Driver’s License Drug and Alcohol Clearinghouse*, [B-328675](#) (Washington, D.C.: Dec. 27, 2016).

- 10 had not been submitted to us as of November 13, 2017.⁴⁰

Among the most active regulatory agencies for economically significant regulations, HHS and the Department of Transportation (Transportation) had higher rates of noncompliance than the government-wide percentages for both the transition and nontransition periods we reviewed. (See table 10 in appendix II.)⁴¹ However, noncompliance was not limited to HHS and Transportation; 17 of the 23 agencies that published economically significant regulations during the periods we reviewed had at least one noncompliant regulation. As noted previously, our sample of significant regulations was not designed to provide estimates concerning individual agencies' noncompliance with CRA.

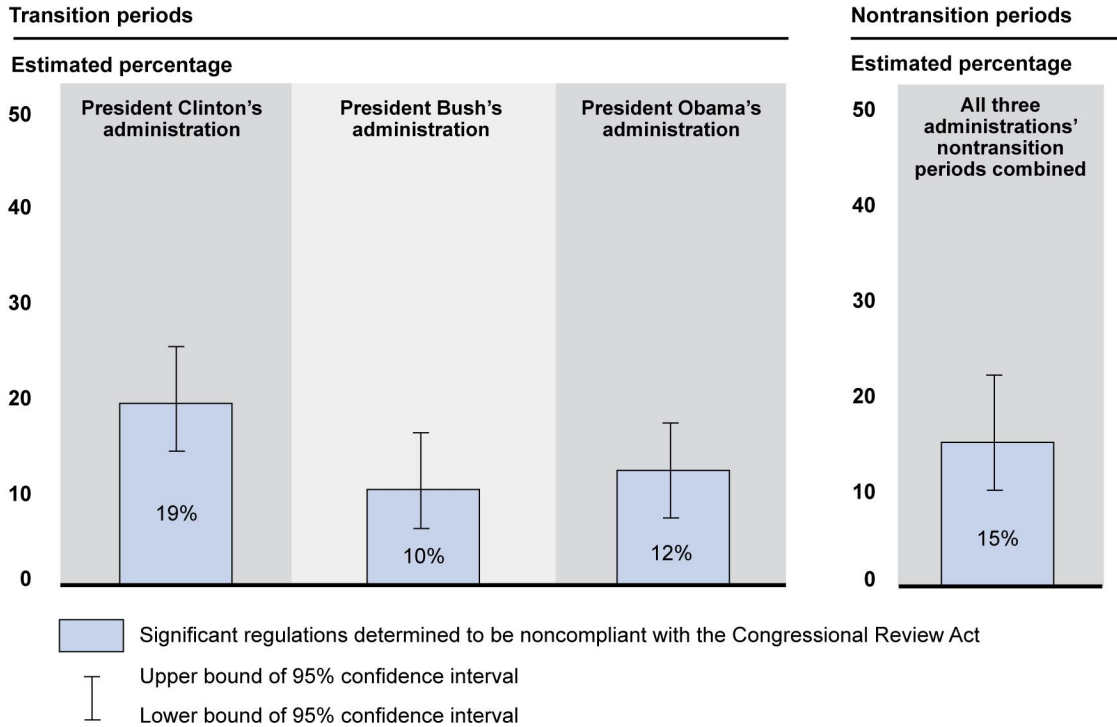
In addition, we estimate that 15 percent of significant regulations published across all periods reviewed failed to meet at least one of the CRA requirements we reviewed. (See figure 9.)⁴² We did not identify any statistical differences in the noncompliance rate among the three transition periods and nontransition periods combined.

⁴⁰During the course of our work, we initially identified 15 economically significant regulations published during the specified periods that were not submitted to us. We contacted the seven agencies that published these regulations. Following our contacts, agencies submitted 5 of these regulations between May and October 2017. However, as of November 13, 2017, 10 regulations had not been submitted to us. While 2 of these had been submitted to at least one House of Congress, CRA also requires submission to us.

⁴¹See appendix II for more information concerning the noncompliance rate for the most active rulemaking agencies for economically significant regulations.

⁴²For this estimate, our 95 percent confidence interval is from 11 percent to 20 percent.

Figure 9: Final Significant Regulations Determined to be Noncompliant with the Congressional Review Act during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of published regulations, GAO's Congressional Review Act database, and the *Congressional Record*. | GAO-18-183

For significant regulations, we developed estimates for the following CRA deficiencies:

- Regulations submitted after the stated effective date:* An estimated 15 percent of significant regulations published during all periods reviewed were not submitted to Congress and us before the stated effective date as required.⁴³ Significant regulations were generally nonmajor rules, which do not have a requirement to delay the effective date by 60 days.⁴⁴ There were no statistical differences among the three transition periods and the nontransition periods regarding this deficiency.

⁴³For this estimate, our 95 percent confidence interval is from 11 percent to 20 percent.

⁴⁴Only one significant regulation we reviewed was submitted to us as a major rule and our analysis took that into account in determining whether that regulation was noncompliant with CRA.

- *Regulations not submitted to us:* An estimated 7 percent of significant regulations published during all periods reviewed had not been submitted to us as of November 17, 2017, with no statistical differences among the three transition periods and nontransition periods.⁴⁵

Agencies' noncompliance with CRA has the overall effect of making it more difficult for Congress to exercise its oversight role under CRA; however, the precise effects of noncompliance depend on the type of regulation and the specific deficiencies. CRA provides expedited procedures that make it easier to overturn a regulation compared to following the regular legislative process.⁴⁶ For economically significant regulations, which are generally classified as major rules under CRA, failing to provide the required delay for congressional review means that Congress has a shorter amount of time to use these expedited procedures to disapprove the regulation before the agency potentially starts enforcement actions. Furthermore, in general, if a rule is not submitted to Congress as required by CRA, Congress cannot use these expedited procedures. Moreover, not submitting a rule to Congress can potentially create legal uncertainty for agencies and regulated parties because courts have differed on the impact of noncompliance with CRA on the enforceability of the regulation.⁴⁷

OIRA staff noted that CRA states that agencies are responsible for complying with the act's requirements, and E.O. 12866 states that agencies are responsible for adhering to applicable laws. However under E.O. 12866, OIRA is also responsible for oversight of agencies' rulemaking, consistent with law, and reviews regulations before publication, which provides it an opportunity to identify and help agencies

⁴⁵For this estimate, our 95 percent confidence interval is from 4 percent to 11 percent. We contacted the agencies that failed to submit regulations published during President Obama's transition period. None of these agencies submitted the regulations following this contact. We plan to contact agencies about the significant regulations published during other periods and not submitted to us.

⁴⁶When a joint resolution of disapproval meets certain criteria, it cannot be "filibustered" in the Senate, meaning that a simple majority can pass such a resolution in the Senate.

⁴⁷Compare, e.g., *U.S. v. Am. Elec. Power Serv. Corp.*, 218 F. Supp. 2d 931 (S.D. Ohio 2002) (holding the CRA precludes judicial review of an agency's failure to submit a rule); *U.S. v. Reece*, 956 F. Supp. 2d 736 (W.D. La. 2013) (holding that judicial review was available).

avoid potential noncompliance.⁴⁸ OIRA staff asserted that they already take steps to check agencies' compliance with CRA.⁴⁹ However, we found that OIRA completed its E.O. 12866 reviews for 110 of the 132 noncompliant economically significant regulations within 90 days of the stated effective date. OIRA staff noted that they cannot monitor every action agencies take following their review of draft final regulations, such as the specific date a regulation is published in the *Federal Register* or whether an agency submits a copy of the regulation to Congress or us. However, because economically significant regulations are generally classified as major rules under CRA, this indicates that OIRA frequently completes its review in close proximity to the start of the 60-day period intended for congressional review, and in such cases the regulation is at high risk of noncompliance with CRA.

This close proximity to the 60-day period provides an opportunity for OIRA to identify potentially noncompliant regulations before agencies publish them and work with agencies on actions that would avoid noncompliance. Our analysis identified such actions agencies could use to comply with CRA. For example, we found instances of agencies explaining to the public that CRA requires a 60-day review period for major rules and therefore identifying an effective date more than 2 months after publication in the *Federal Register*. In other instances, agencies stated that the regulation would take effect 60 days after publication in the *Federal Register*, which ensures compliance with CRA provided that the regulation is submitted to Congress and us on or before the day it is published.⁵⁰ In other cases, agencies stated they had "good cause," to not delay the effective delay, such as a statutory or judicial deadline or an emergency situation.

⁴⁸Specifically, E.O. 12866 states that, "the Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency."

⁴⁹OIRA staff made this statement in February 2018 after reviewing our draft report. However, they did not provide supporting documentation and, thus, we were not able to verify this statement.

⁵⁰The Office of the Federal Register states that it will compute and insert the specific date if an agency indicates the regulation shall take effect 60 days after publication in the *Federal Register*. See, p. 3-8 of Office of the Federal Register, *Document Drafting Handbook* (Washington, D.C.: May 2017).

Variations Existed between Transition and Nontransition Periods in Agencies' Anticipated Types of Economic Effects for Economically Significant Regulations

Agencies anticipated that economically significant regulations published during transition periods were more likely to result in economic costs and benefits and generally less likely to result in “transfers” of income from taxpayers to program beneficiaries. To identify the types of economic effects that agencies anticipated, we placed the 527 economically significant regulations reviewed across all periods into one of four categories based on information agencies provided in the published regulation concerning the anticipated costs, benefits, or transfers resulting from a regulation:⁵¹

- **Expected economic costs, benefits, or both:** For 197 of the 527 economically significant regulations (or 37 percent), agencies expected costs or benefits or both to result and made no mention of transfers. Our previous work has noted that regulations typically require a desired action or prohibit certain actions by regulated parties.⁵² Such requirements may impose costs on private-sector parties, such as businesses and individuals, and may also provide benefits to society as a whole.⁵³ Examples we reviewed included EPA regulations limiting emissions from industrial facilities with the goal of improving air quality and Labor Department regulations intended to improve workplace safety.
- **Transfers:** For 184 of the 527 economically significant regulations (or 35 percent), agencies expected transfers to result from the regulation and made no mention of either costs or benefits. Examples we

⁵¹We did not review the extent to which agencies assessed alternatives for economically significant regulations.

⁵²GAO, *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, [GAO-14-268](#) (Washington, D.C.: Apr. 11, 2014).

⁵³We recognize that certain regulations may also impose requirements on state, local, and tribal governments and may also impose administrative costs on federal agencies, but for simplicity we will use the terms—*private sector*, *businesses*, and *individuals*—as shorthand for referring to regulated parties.

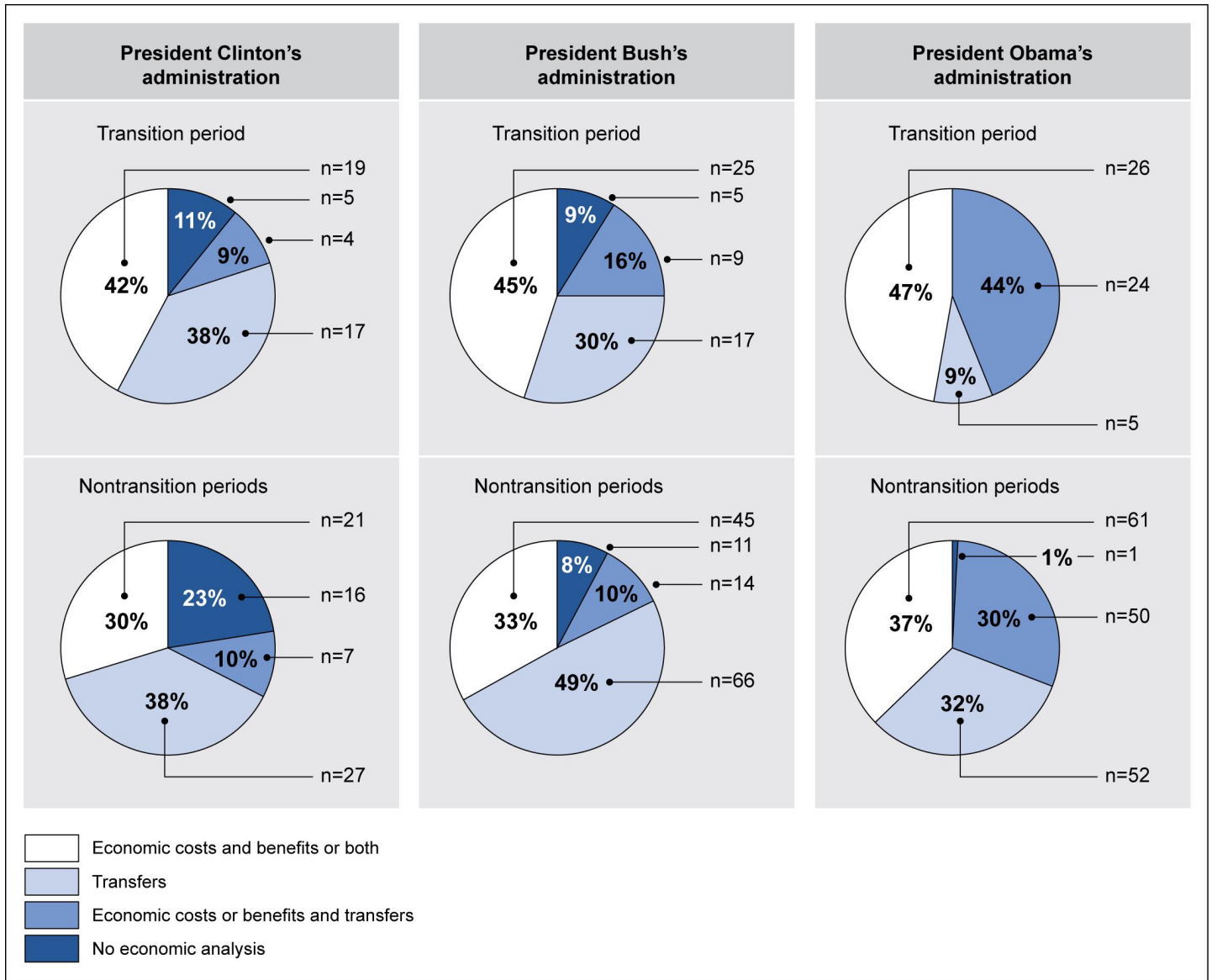
reviewed included HHS regulations stating how much Medicare will reimburse Medicare providers and Department of Agriculture regulations providing disaster assistance to farmers. While these payments increase the incomes of Medicare providers and farmers, Circular A-4 directs agencies to avoid misclassifying these transfers as economic costs or benefits because they do not change aggregate social welfare.

- **Combination of economic costs, benefits, or transfers:** For 108 of the 527 economically significant regulations (or 20 percent), agencies expected costs or benefits or both to occur and also expected transfers to occur. Examples we reviewed included regulations that expanded access to health insurance for tribal employees and established paid sick leave for federal contractors that were anticipated to result in both administrative costs and transfers.
- **No economic analysis:** The remaining 38 of the 527 economically significant regulations (or 7 percent) provided no economic analysis.⁵⁴ Of these regulations, 22 were updates to migratory bird hunting regulations Interior published during Presidents Clinton's Administration and President Bush's first term. During the 2003-2004 nontransition period of President Bush's Administration, Interior began providing a brief summary of the economic effects anticipated to result from hunting these birds.

Comparing these reported effects between transition and nontransition periods, we found that agencies indicated that economically significant regulations published during transition periods were more likely to result in costs and benefits to society than those published during nontransition periods across all three administrations. (See figure 10.) In contrast, regulations involving only transfers became a smaller proportion of the economically significant regulations published during Presidents Bush's and Obama's transition periods. Regulations that involved various combinations of costs, benefits, and transfers became a larger proportion of regulations published during Presidents Bush and Obama's transition periods and overall became a larger proportion of economically significant regulatory activity that occurred during President Obama's transition period.

⁵⁴The percentages for these four categories do not add up to 100 percent due to rounding.

Figure 10: Number of Final Economically Significant Regulations with Anticipated Economic Costs, Benefits, and Transfers during Specified Transition and Nontransition Periods, 1996-2017



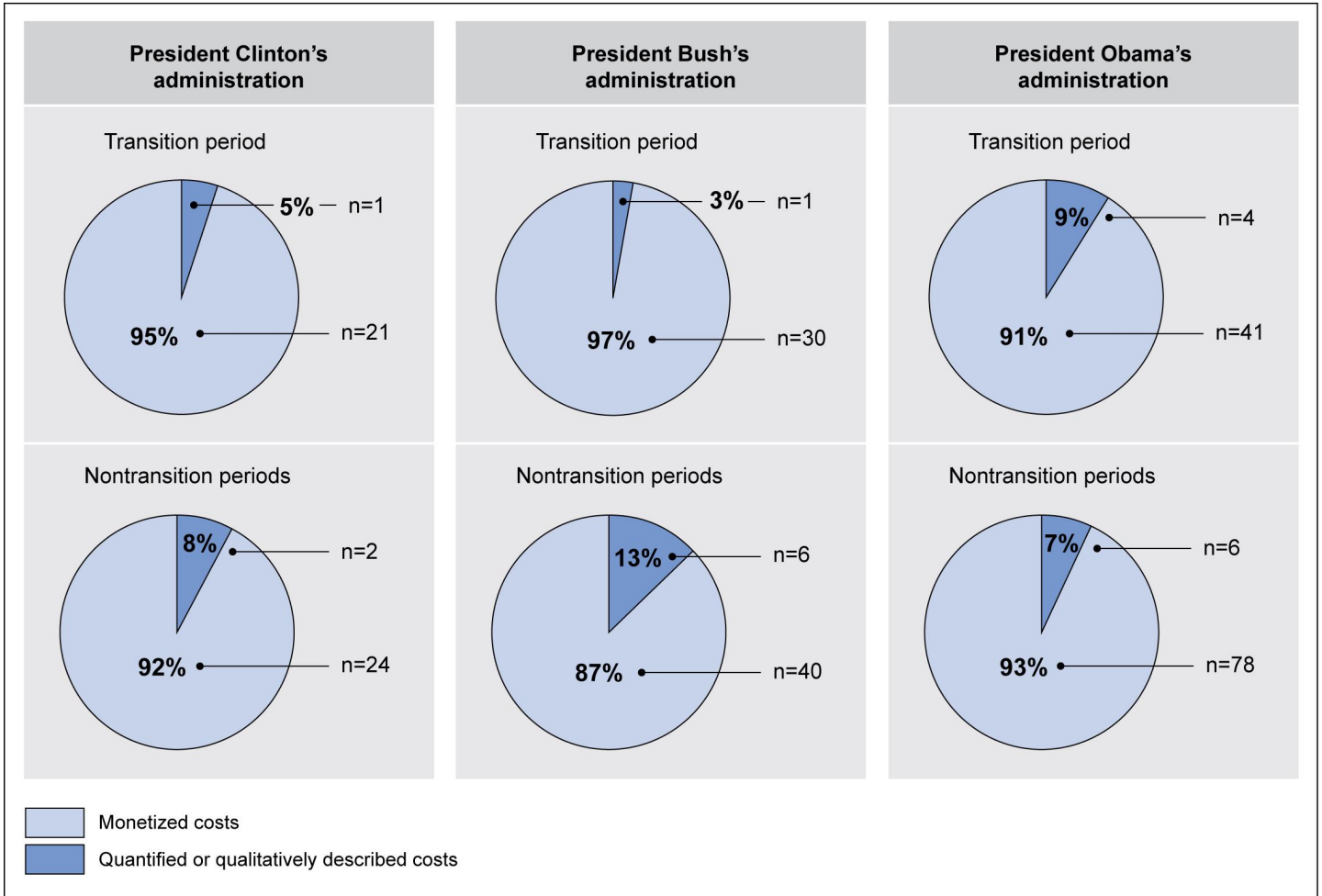
Source: GAO analysis of published regulations and Office of Management and Budget reports. | GAO-18-183

Note: Some percentages do not add up to 100 percent due to rounding.

Executive guidance encourages agencies to quantify and monetize expected costs and benefits to help decision makers understand the consequences of regulatory approaches. E.O. 12866 states that for

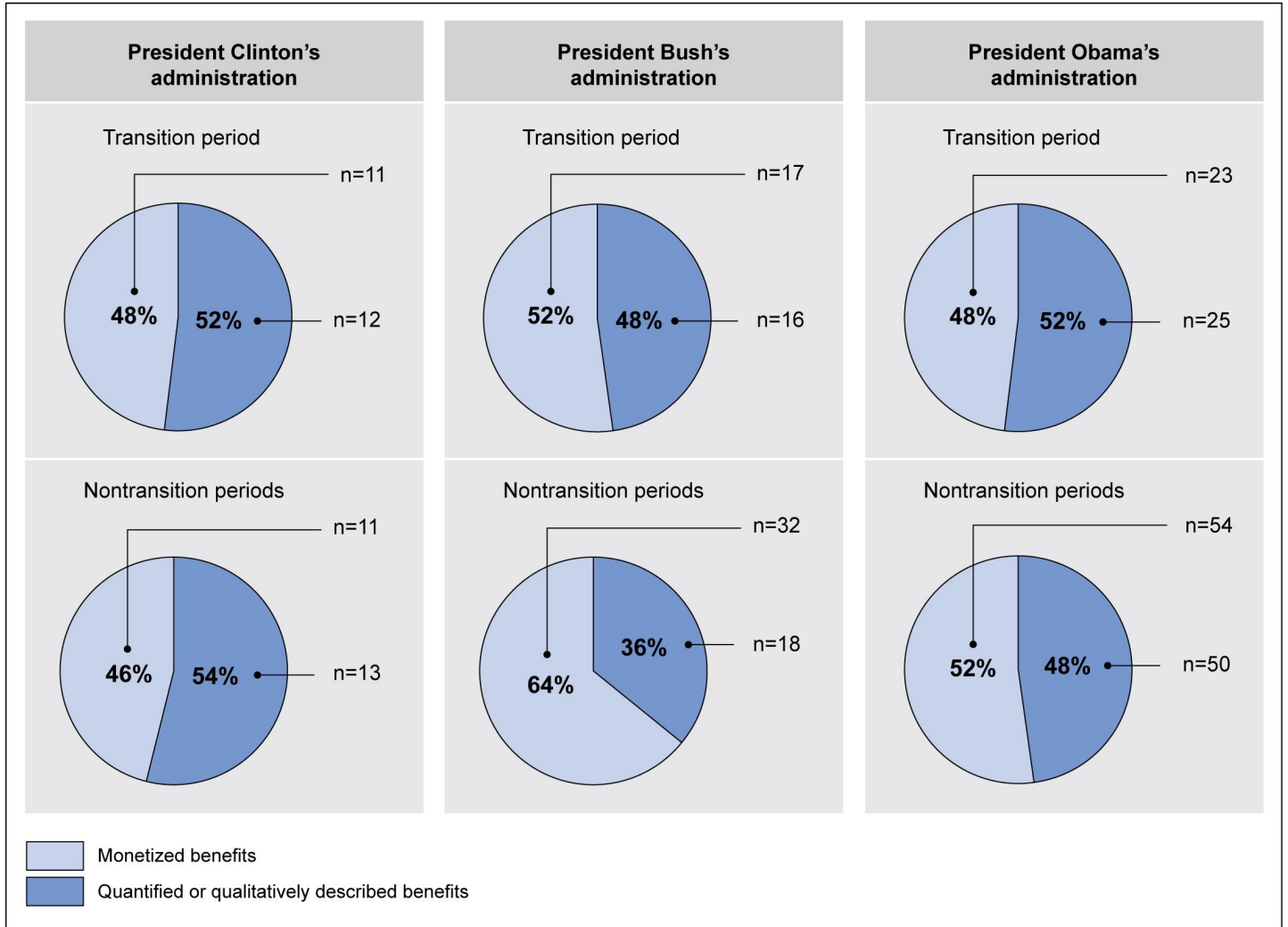
economically significant regulations agencies should analyze costs and benefits to the extent feasible, and Circular A-4 encourages agencies, to the extent possible, to provide monetized estimates of these costs and benefits. For economically significant regulations, we found that agencies were more likely to monetize anticipated costs and transfers compared to benefits and were more likely to monetize anticipated costs during Presidents Clinton and Bush's transition periods. (See figures 11-13.) For economically significant regulations, we also did additional analysis of the extent to which agencies anticipated the benefits would justify the costs and the extent to which net costs or benefits were calculated. (See appendix II.)

Figure 11: Extent to Which Agencies Monetized Anticipated Economic Costs Resulting from Final Economically Significant Regulations during Specified Transition and Nontransition Periods, 1996-2017



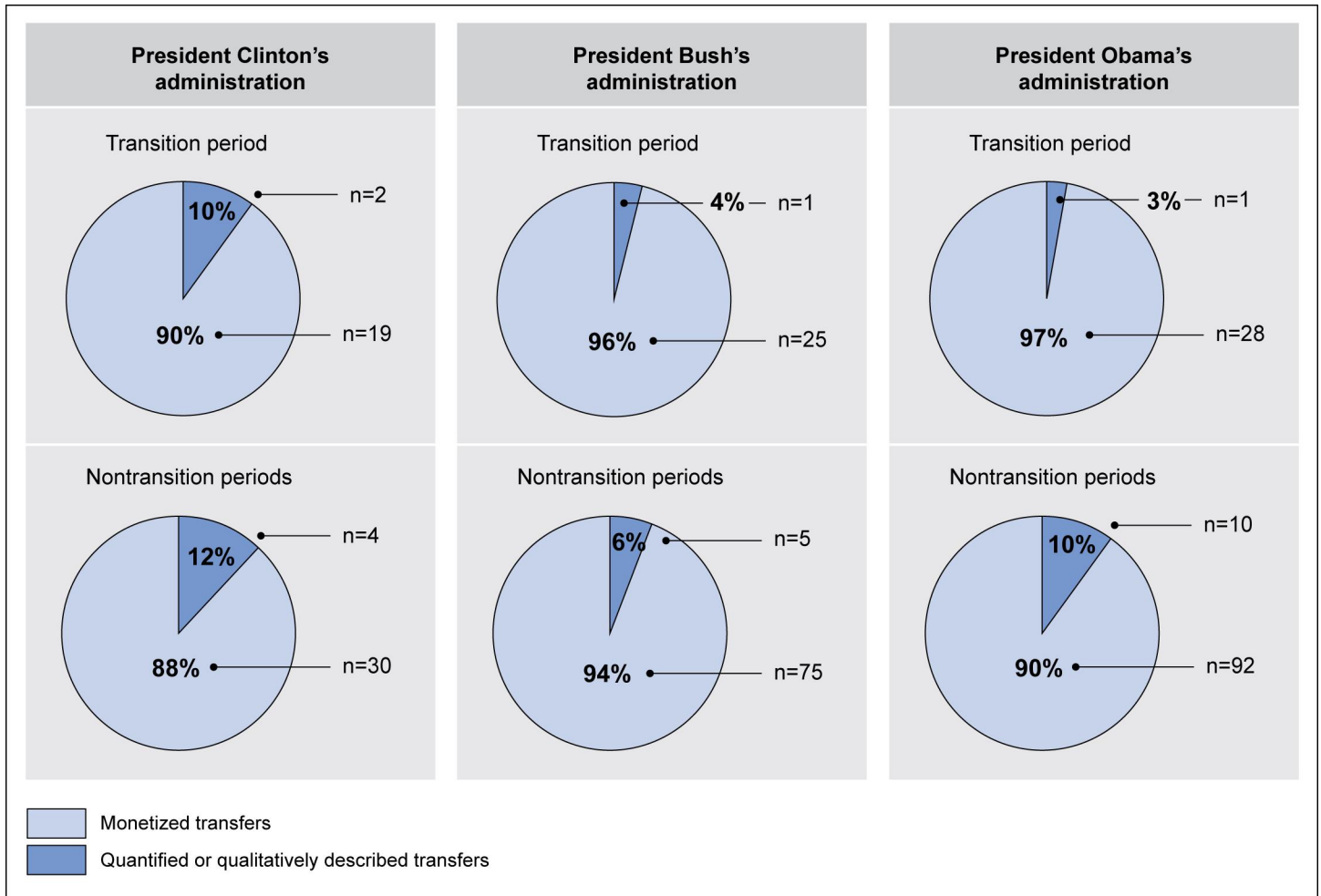
Source: GAO analysis of published regulations. | GAO-18-183

Figure 12: Extent to Which Agencies Monetized Anticipated Economic Benefits Resulting from Final Economically Significant Regulations during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of published regulations. | GAO-18-183

Figure 13: Extent to Which Agencies Monetized Anticipated Transfers Resulting from Final Economically Significant Regulations during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of published regulations. | GAO-18-183

In examining the extent to which agencies anticipated that costs, benefits, and transfers would result from significant regulations, we found that an estimated 57 percent across all periods reviewed provided information on the anticipated costs, benefits, transfers, or some combination of these, with no statistical differences among the three transition periods and the nontransition periods combined.⁵⁵ An estimated 43 percent of significant regulations across all periods reviewed did not include any information on

⁵⁵For this estimate, the 95 percent confidence interval was between 51 and 62 percent.

the anticipated costs, benefits, transfers, or some combination of these, with no statistical differences among the three transition periods and the nontransition periods combined.⁵⁶

Conclusions

Although we confirmed that agencies published a larger number of regulations during transition periods than during the same months in nontransition periods, the variety of other indicators we examined generally suggest that there were few significant differences—other than their numbers—when comparing regulations published during the three transitions to each other and to those published during nontransition periods. Among the few exceptions, economically significant regulations published during the transition periods were more likely to have provided advanced notice to the public and more likely to result in private sector costs and potential benefits to society.

However, agencies' noncompliance with the requirements of CRA for economically significant regulations (major rules under CRA) grew worse over time. Under CRA, agencies must allow additional time for Congress to review these most impactful regulations before they take effect unless the agency claims good cause for not delaying the effective date. Our review did highlight a potential opportunity for OIRA to work with agencies to improve CRA compliance going forward. Specifically, OIRA staff have the unique opportunity to work with agencies before economically significant regulations and regulations deemed significant for other reasons are published in final form in the *Federal Register*. OIRA staff should use this opportunity to identify economically significant regulations whose planned effective dates appear at risk of not providing Congress with sufficient time to review the regulation.

To do this, our analysis points to a simple “rule of thumb” OIRA reviewers could use. If an agency is planning to make an economically significant regulation effective in less than 3 months from the time OIRA is completing its review, OIRA staff should discuss with agency officials strategies for ensuring compliance with CRA. These could include

⁵⁶For this estimate, the 95 percent confidence interval was between 38 and 49 percent. We did additional analyses of the extent to which agencies anticipated costs, benefits, or transfers would result from significant regulations during the three transition periods and nontransition periods combined, which are presented in appendix II.

delaying the planned effective date, stating in the submission to the *Federal Register* that the regulation will go into effect 60 days after publication and ensuring prompt submission to Congress and us, or discussing whether the agency has a reasonable basis to claim “good cause” for not delaying the effective date and ensuring that the use of “good cause” is clearly explained in the regulation. Ensuring that agencies consistently provide Congress with the required time to review, and possibly disapprove regulations, is important throughout a President’s term, and particularly following a presidential transition when Congress typically has a larger number of regulations to potentially review.

Recommendation for Executive Action

We are making the following recommendation to the Director of OMB:

- The Director of OMB should ensure that OIRA’s staff, as part of the regulatory review process, examine the planned timeframes for implementing economically significant regulations or major rules and identify regulations that appear at potential risk of not complying with the Congressional Review Act’s delay requirements and then work with the agencies to ensure compliance with these requirements (Recommendation 1).

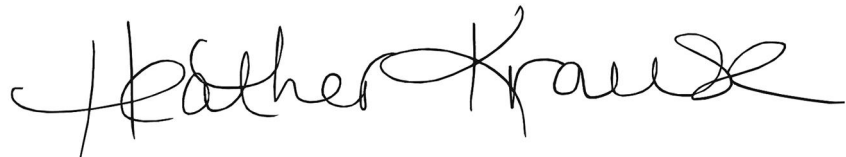
Agency Comments and Our Evaluation

We provided a draft of this report to the Director of OMB on January 18, 2018. In oral comments received on February 22, 2018, staff from OIRA and the Office of General Counsel discussed the findings, conclusions, and recommendation. OMB staff did not agree or disagree with our recommendation. However, they identified some concerns regarding the recommendation to improve agencies’ compliance with CRA. They noted that: (1) CRA states that agencies are responsible for complying with the act’s delay and submission requirements; (2) agencies determine when their regulations will take effect and when they submit the regulations to Congress and us, neither of which OMB has direct control over; and (3) where OMB does exercise authority—the regulatory review process under E.O. 12866—OIRA staff already take steps to check agencies’ compliance with CRA, and they do not see what more they could do to improve agencies’ compliance with the act. The staff also provided technical comments that were incorporated as appropriate.

Regarding the first two concerns raised by OIRA staff, we believe our report sufficiently recognizes agencies' responsibilities under CRA. Regarding the third concern, we disagree that OMB has done all that it can to improve compliance with CRA. As noted above, OMB staff asserted that they do take steps to check for CRA compliance, and these checks could provide a starting point for OMB to address our recommendation. However, our analysis raises questions about how effective these checks have been. OIRA completed its review for 110 of the 132 noncompliant economically significant regulations within 90 days of the stated effective date. This analysis points to a simple "rule of thumb" for OIRA reviewers to use. If a regulation has a planned effective date in less than 90 days, it is at high risk of noncompliance with CRA. Further, our report identifies three specific strategies OIRA staff could discuss with agency officials on how to comply with CRA. Thus, we believe that our report shows that OMB could do more to ensure CRA compliance and identifies specific ways OMB could help agencies accomplish this.

We are sending copies of this report to the Director of OMB as well as appropriate congressional committees and other interested parties. In addition, this report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-6806 or krauseh@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "Heather Krause". The signature is written in a cursive, flowing style.

Heather Krause
Director, Strategic Issues

List of Committees

The Honorable Ron Johnson
Chairman
The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Trey Gowdy
Chairman
The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

Appendix I: Objectives, Scope, and Methodology

Section 5 of the Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015 includes a provision for us to assess final significant regulatory actions promulgated by executive departments during specified presidential transition periods and to analyze and compare multiple characteristics of regulations issued during these transition periods to each other and to regulations issued during the same 120-day period (September 23 to January 20) in nontransition years since 1996.¹ The transition periods identified in the act are those ending on January 20 in 2001, 2009, and 2017, which occurred at the end of the administrations of Presidents Clinton, Bush, and Obama.

For purposes of this review, executive agencies are cabinet departments and other agencies that answer directly to the President and exclude the independent regulatory agencies.² The definition of what the mandate refers to as a “covered regulation” is the same as the definition of a final significant regulatory action under Executive Order (E.O.) 12866.³ Under E.O. 12866, the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs (OIRA) reviews significant proposed and final regulatory actions from all federal agencies (other than independent regulatory agencies) before they are published in the *Federal Register*. The order defines significant regulatory actions as those that are likely to result in a regulation that may:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public

¹Pub. L. No. 114-136, § 5. 130 Stat. 301, 307–308 (2016).

²“Independent regulatory agencies” are the boards and commissions identified as such in the Paperwork Reduction Act, such as the Securities and Exchange Commission. 44 U.S.C. § 3502(5).

³Executive Orders 13563, 13771, and 13777 subsequently reaffirmed E.O. 12866. Exec. Order No. 12866, *Regulatory Planning and Review*, 58 Fed. Reg. 51,735 (Oct. 4, 1993); Exec. Order No. 13563, *Improving Regulation and Regulatory Review*, 76 Fed. Reg. 3821 (Jan. 21, 2011); Exec. Order No. 13771, *Reducing Regulation and Controlling Regulatory Costs*, 82 Fed. Reg. 9339 (Feb. 3, 2017); and Exec. Order No. 13777, *Enforcing the Regulatory Reform Agenda*, 82 Fed. Reg. 12,285 (Mar. 1, 2017).

health or safety, or State, local, or tribal governments or communities (generally referred to as “economically significant” regulations);

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the executive order.⁴

For each of the three transition periods, and among these transition periods and the same 120-day periods in the 18 nontransition periods, our objectives were to assess the extent to which there were variations in:

1. The number of regulations and other indicators related to the scope and transparency of these regulations;
2. Agencies’ reported compliance with procedural requirements for promulgating the regulations; and
3. The anticipated economic effects agencies reported would result from the regulations.

In general, to address each of these objectives we reviewed the universe of all 527 final economically significant regulations published during the specified time periods and a generalizable stratified random sample of 358 final significant regulations from the population of the 1,633 final significant regulations published during those same periods. For economically significant regulations, we can provide precise statistics on the extent of a finding, because we reviewed the universe of final economically significant regulations. For significant regulations, our findings are based on a sample designed to achieve a 7 percent margin of error and 95 percent level of confidence for each stratum in the population of all covered significant regulations published in each transition period and, collectively, all nontransition periods. Our findings for the sample are not generalizable to the individual agencies that published those regulations. We divided the significant regulations into

⁴For the purposes of this report, we differentiate between the results for “economically significant” regulations (criterion 1 above, i.e., generally those with annual economic effects greater than \$100 million) and the results for other significant regulations (criteria 2-4 above, i.e., those expected to have less than \$100 million in economic effects but are deemed significant under the order’s other three definitions of significance). We will refer to the latter category as “significant regulations.”

four strata depending on when the regulation was published: 1) the 2000-2001 transition period; 2) the 2008-2009 transition period; 3) the 2016-2017 transition period; and 4) all the nontransition periods consolidated into one stratum.⁵ We made two modifications to the data for each stratum before we selected our sample: 1) We added to the sampling frames additional significant regulations that we had become aware of during our review of economically significant regulations; and 2) we reviewed the sampling frames and filtered out duplicate entries. Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn. Since each sample could have provided different estimates, we express our confidence in the precision of our particular sample's results as a 95 percent confidence interval (for example, plus or minus 7 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples we could have drawn. Table 3 summarizes the population and sample size by stratum for significant regulations.

Table 3: Disposition of Sample of Significant Regulations Published during Transition and Nontransition Periods, 1996 to 2017

Regulation stratum	Population	Total selected	Sample	
			In scope	Out of scope ^a
President Clinton's Transition Period	107	70	68	2
President Bush's Transition Period	135	80	78	2
President Obama's Transition Period	117	74	69	5
Nontransition Periods	1274	170	143	27
Total	1633	394	358	36

Source: GAO analysis of data from Reginfo.gov and published regulations in the *Federal Register*. | GAO-18-183

^aIn the course of our review, we identified regulations that were incorrectly identified by Reginfo.gov as significant regulations published during the specified time periods. We discarded these rules from our sample.

⁵In drawing the sample for the 2016-2017 stratum, we used a different data source than the three other strata. For the three other strata, we used data from Reginfo.gov contained in Extensible Markup Language (XML) files to draw the samples. For the 2016-2017 stratum, we used the search results from Reginfo.gov as the sampling frame because the XML data appeared incomplete. Nevertheless, we believe that the four strata are comparable because we observed no unusual patterns among the search results.

We primarily relied on the Reginfo.gov database on OMB's regulatory reviews under E.O. 12866 to compile lists of final economically significant and significant regulations published during each of the transition and nontransition periods.⁶ As described in more detail below, we refined and supplemented the lists from the Reginfo.gov database with information from our database of rules submitted to us under the Congressional Review Act (CRA), and the Government Printing Office's Federal Digital System database on the *Federal Register*.⁷ To test the reliability of these databases, we reviewed relevant documentation, interviewed knowledgeable agency officials, looked for missing data and outliers (for example, by identifying missing records or those included in error), traced a sample of entries to source documents, and conducted additional checks. We concluded that the data were sufficiently reliable for our purposes.

Further for all objectives and for both economically significant and significant regulations, our primary source was the text of the published regulation. However, as described below, we did sometimes supplement that information with information from other publicly available sources. We downloaded copies of published regulations from the website maintained by the Government Printing Office, which securely controls content to ensure the integrity and authenticity of the *Federal Register*. We used a data collection instrument to collect standardized information about individual regulations as described below. We did not evaluate the agencies' decisions regarding procedural requirements or their determinations regarding the effects of their rules. Instead, consistent with our practice in preparing major rule reports to Congress under CRA and prior reports on federal rulemaking, we are providing information about what the agencies published in the *Federal Register*.

⁶See <https://www.reginfo.gov/public/jsp/EO/eoDashboard.jsp>. OMB and the Regulatory Information Service Center (RISC) share responsibilities for the Reginfo.gov database. RISC, within the General Services Administration, facilitates the development of, and access to, information about federal regulatory and deregulatory activities. In cooperation with OMB's OIRA, it established the Reginfo.gov site to assist users who want to find information about government regulation.

⁷CRA generally requires agencies to submit rules to both Houses of Congress and the U.S. Comptroller General before the rules can become effective. 5 U.S.C. § 801(a)(1)(A). The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration containing legal documents and notices pertaining to federal agencies, including rules and regulations.

To assess the number of regulations and other variations related to the scope and transparency of these regulations, we first reviewed and refined our lists of economically significant and significant regulations published during each of the transition and nontransition periods. For economically significant regulations, we compared the initial lists compiled from Reginfo.gov against lists of major rules agencies had submitted to us under CRA to look for potential omissions.⁸ We then reviewed each of the published regulations to identify explanations agencies may have provided of a selected regulation's classification as economically significant under E.O. 12866 to tally total numbers of economically significant regulations published during each of the time periods and the agencies publishing them.⁹ To identify economically significant regulations published annually, we looked for indications in the title or summary of the regulation and confirmed that these regulations appeared in multiple time periods reviewed.¹⁰ For significant regulations, we obtained data from Reginfo.gov concerning the number of regulations reportedly published and the agencies reported to have published them. We also reviewed the published regulations for explanations of the regulations' classification under E.O. 12866.¹¹ Our sample of significant regulations was not designed to make estimates for individual agencies,

⁸The definition of economically significant under E.O. 12866 is largely the same as the definition of major rules under the Congressional Review Act. Our database is accessible at <http://www.gao.gov/legal/congressional-review-act/overview>.

⁹Our analysis recognized that agencies used varying terminology to indicate a regulation was economically significant or significant. If the regulation was silent or unclear on whether it was economically significant, we left it in the population on the rationale that it had been identified by Reginfo.gov as economically significant or had been submitted to us as a major rule. We removed from the economically significant population regulations for which the agency explicitly stated they were not economically significant and either confirmed that they were in the sampling frame for significant regulations or removed them if they were not significant. During our review of the sample of significant regulations, it came to our attention that two regulations identified by Reginfo.gov as significant were in fact economically significant according to the published regulation, and we therefore added them to the economically significant population.

¹⁰While the migratory bird hunting regulations are updated throughout the calendar year for different hunting seasons, for clarity we classified them as annual updates because we examined the iterations that pertained to the late season.

¹¹Our analysis recognized that agencies used varying terminology to indicate a regulation was significant. If the regulation was silent or unclear on whether it was significant, we left it in the sample on the rationale that it had been identified by Reginfo.gov as significant and nothing in the rule itself contradicted that classification. We removed regulations for which the agency explicitly stated they were not significant. If the agency stated it was economically significant, we confirmed we had reviewed it as part of our analysis of economically significant regulations or, in two instances, added them to that population.

so we used data from Reginfo.gov instead. For both economically significant and significant final regulations, we compiled information on the rulemaking procedures used by agencies to determine whether the agencies had published a prior notice of proposed rulemaking (NPRM). We did this by looking for discussion of a proposed regulation in the published final regulation.¹² As necessary, we supplemented that review with information from our major rule reports, if available, and data from Reginfo.gov concerning the rulemaking history. To describe the extent to which regulations had been advertised in the previous spring's Unified Agenda, we searched for the regulation's identification number(s) in the online database for the Unified Agenda.¹³

To assess the extent to which there were variations in agencies' reported compliance with procedural requirements for promulgating the regulations, we reviewed the published text of the regulations and, for regulations that were also major rules, the major rule reports that we prepared for Congress under CRA.¹⁴ We reviewed agencies' reported compliance with procedural requirements for promulgating regulations under five statutes—CRA, the Regulatory Flexibility Act (RFA), the Paperwork Reduction Act (PRA), the Unfunded Mandates Reform Act of 1995 (UMRA), and the Small Business Regulatory Enforcement Fairness Act (SBREFA)—including whether and, if so, how the agency addressed the requirement in the published regulation. To determine whether the Environmental Protection Agency and the Occupational Safety and Health Administration held the panels they were required to hold under

¹²As we had previously reported in December 2012, agencies sometimes published final regulations for which parts of the regulations had a prior NPRM and other parts did not. (See GAO, *Federal Rulemaking: Agencies Could Take Additional Steps to Respond to Public Comments*, [GAO-13-21](#) (Washington, D.C.: Dec. 20, 2012).) For the purposes of this report, we classified such regulations as having a prior NPRM. During this review, we identified 26 economically significant regulations for which agencies published NPRMs on portions of the regulation but claimed good cause to not publish an NPRM for other portions.

¹³If the Reginfo.gov summary page stated that the identification number was appearing for the first time in the Unified Agenda, we recorded that the regulation had not appeared in the Unified Agenda. For joint regulations involving multiple agencies or regulations with multiple identification numbers, we documented if any of the identification numbers had appeared in the relevant agenda.

¹⁴CRA requires our reports on major rules that federal agencies make to include summaries of the procedural steps taken by the agencies.

SBREFA, we also reviewed the information on the Small Business Administration’s website summarizing these panels.¹⁵

We took multiple steps to identify noncompliance with CRA. We first determined whether every regulation had been submitted to us, and for regulations that had been submitted, we recorded the date we received it.¹⁶ We used the date a regulation had been submitted to us when assessing whether a regulation’s stated effective date was consistent with CRA requirements. We also reviewed whether agencies had claimed “good cause” for not delaying the effective date.¹⁷ For regulations not submitted to us or those regulations submitted to us after they should have been submitted, we conducted additional checks of the *Congressional Record* to see if we could find evidence that the agency had provided a copy of the regulation to either of the Houses of Congress in time for the regulation’s stated effective date to be consistent with CRA requirements.¹⁸ If we could find evidence that any of these requirements had been met, we removed the regulation from further consideration as potentially noncompliant. As such, our methodology was designed to identify instances of noncompliance. Our methodology does not allow us to conclude that the remaining regulations were fully compliant. In addition, it was beyond the scope of our review to evaluate the appropriateness of agencies claiming “good cause” for not providing the required delay.

¹⁵Available from <https://www.sba.gov/category/advocacy-navigation-structure/regulatory-policy/regulatory-flexibility-act/sbrefa>.

¹⁶If an agency asserted that the regulation was exempt from CRA because it met one of the exceptions to the definition of “rule” in CRA, we did not identify the regulation as noncompliant irrespective of whether it was submitted to us and other data we collected related to CRA.

¹⁷Agencies can claim “good cause” to waive requirements to publish proposed rules and “good cause” to waive the delay in effective date requirements. 5 U.S.C. §§ 553(b)(3)(B), (d)(3); 808(2). Only claims of “good cause” to waive the delay in effective date requirements are relevant to CRA noncompliance. We also recognized that agencies used varying terminology for claiming “good cause” for not delaying the effective date and if there was unclear language that could potentially be interpreted as doing this, we removed those regulations from further consideration as noncompliant, unless the agency failed to submit the regulation to us. Further, our analysis also recognized that certain regulatory activity, such as the migratory bird hunting regulations are exempt from CRA’s requirements to delay the effective date. 5 U.S.C. § 808(1)

¹⁸The *Congressional Record* summarizes the proceedings of Congress and includes, among other things, communications from executive agencies.

To assess the extent to which there were variations in agencies' reported anticipated economic effects resulting from the regulations, we reviewed the published regulations to see whether they contained a section clearly identified as economic analysis or discussion of the analytical requirements concerning E.O. 12866.¹⁹ We used selected elements from OMB Circular A-4 to review the analyses included in the published regulations to identify expected costs, benefits, or transfers, and whether that information was provided in monetary, quantitative, or qualitative terms. To help identify regulations that involved transfers, we also reviewed the annual reports OMB prepares for Congress on the costs and benefits of federal regulations.²⁰ OMB includes in these reports a list of transfer regulations and has used a consistent definition over time.²¹ We also looked for indication in the published regulation's economic analysis that the regulation involved such topics as transfers, or federal payments to certain groups in society (for example, Medicare recipients), subsidies for certain economic activities, or user fees or royalties people pay the government to name several common examples. To determine the extent to which agencies discussed whether they expected that the benefits would justify the costs, we looked for "bottom line" or other concluding statements agencies may have provided in their economic analysis.²² We also looked, when relevant, for a discussion of what the

¹⁹If the regulation contained no section clearly identified as economic analysis, we looked to see if the sections addressing other analytical requirements contained any explanation of anticipated costs and benefits. Further, if an agency clearly directed the public to a specific document—for example, a regulatory impact analysis available on regulations.gov or the economic analysis the agency had presented in an NPRM—we reviewed those. However, we did not review economic analyses that had been purportedly done, but were not readily accessible to the public at the time of our review.

²⁰These reports are available at https://obamawhitehouse.archives.gov/omb/inforeg_regpol_reports_congress/.

²¹At the time of our review, OMB had not finalized its reports on regulatory activity beyond 2015. The 2016 report on regulatory activity in fiscal year 2015 was in draft form. Thus, we were not able to consult OMB's reports concerning the 2016-2017 covered period and for only part of the 2015-2016 covered period. However, we believe the data on transfers are comparable for the reasons described above.

²²We only did this analysis for the subset of regulations that discussed both costs and benefits. Our analysis recognized that agencies used varying terminology and did not always use the precise language from E.O. 12866 that they had made a reasoned determination that benefits justify costs. Our analysis also recognized that some agencies had calculated net benefits or net costs and if an agency provided this information we also recognized that the agency had addressed the requirement under E.O. 12866 to determine whether benefits justify costs.

net benefits or costs were expected to be.²³ For transfer regulations that were economically significant, we examined the extent to which agencies quantified or monetized the expected transfers. If available, we used accounting statements agencies may have prepared summarizing the anticipated economic effects to help collect all of this information. We did not assess whether the agencies' determinations regarding the benefits and costs were reasonable. In addition, we did not assess whether the agencies analyzed regulatory alternatives and uncertainty.

We conducted this performance audit from May 2016 to March 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

²³We conducted this review for the subset of regulations that monetized both costs and benefits.

Appendix II: Additional GAO Analysis of Final Regulations Published During Specified Periods, 1996-2017

The figures and tables in this appendix provide more detailed information on the results of additional analyses we completed for this report related to each of our three objectives. For economically significant regulations, we provide precise statistics on the extent of a finding, because we reviewed the universe. For significant regulations, our findings are based on a sample and include the upper and lower bounds of confidence intervals for estimated values.

Analyses of Indicators Related to the Numbers, Scope, and Transparency of Regulations

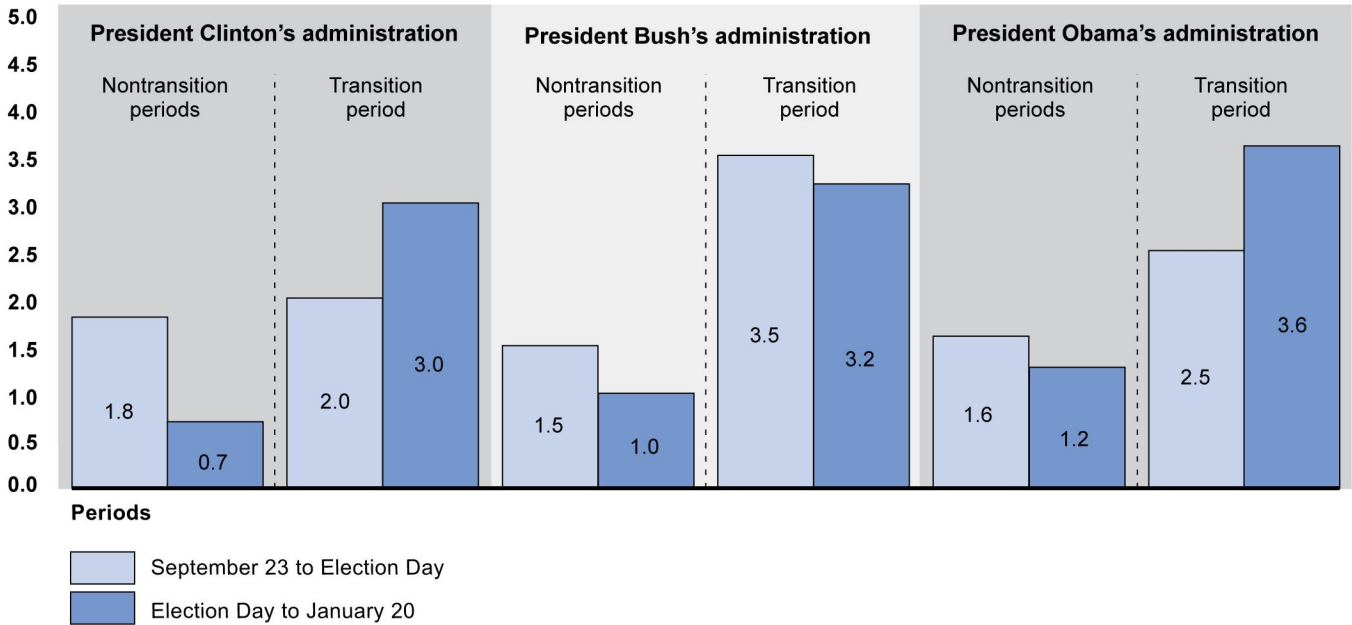
In this section, we provide additional information from our analyses of:

- the extent to which economically significant regulations were published before or after the presidential elections in 2000, 2008, and 2016;
- the most active rulemaking agencies for economically significant and significant regulations among the three administrations' transition and nontransition periods;
- the number of economically significant regulations for which agencies reported they were under a statutory or judicial deadline to promulgate the regulation; and
- the median length, in days, of Office of Information and Regulatory Affairs (OIRA) regulatory reviews under Executive Order (E.O.) 12866 for draft final economically significant and significant regulations during transition and nontransition periods.

We reviewed the extent to which economically significant regulations were published before or after the presidential elections in 2000, 2008, and 2016 and found that Presidents Clinton and Obama's administrations increased their rate of rulemaking following the election, while President Bush's administration decreased its rate of rulemaking. (See figure 14.)

Figure 14: Rate of Final Economically Significant Regulatory Activity Occurring Before and After the 2000, 2008, and 2016 Elections Preceding Presidential Transitions

Average number of economically significant regulations published per week



Source: GAO analysis of published regulations. | GAO-18-183

Note: We reviewed the date on which economically significant regulations were published. We divided regulations into two smaller categories: Those published between September 23 and when the election occurred or would have occurred (federal elections only take place in even-numbered years) and those published between the election and January 20. We then took the total number of economically significant regulations published during each of these smaller periods and divided it by the number of days to calculate the rate agencies were publishing regulations.

We identified the most active rulemaking agencies for economically significant regulations among the three administrations' transition and nontransition periods and did the same for significant regulations. (See tables 4-9.)

Appendix II: Additional GAO Analysis of Final Regulations Published During Specified Periods, 1996-2017

Table 4: Agencies Publishing the Largest Number of Final Economically Significant Regulations during President Clinton’s Administration, 1996-2001

<i>Transition Period</i> (1 120-day period spanning September 23, 2000 to January 20, 2001)			<i>Nontransition Periods</i> (4 120-day periods spanning September 23 to January 20)		
Agency	Number of Regulations	Percentage of Regulations	Agency	Number of Regulations	Percentage of Regulations
Health and Human Services	12	27%	Health and Human Services	21	30%
Agriculture	10	22%	Interior	13	18%
Labor	6	13%	Environmental Protection Agency	11	15%
Environmental Protection Agency	6	13%	Agriculture	9	13%
Interior	5	11%	Labor	4	6%
Other Agencies	6	13%	Other Agencies	13	18%
Total	45	100%	Total	71	100%

Source: GAO analysis of published regulations. | GAO-18-183

Table 5: Agencies Publishing the Largest Number of Final Economically Significant Regulations during President Bush’s Administration, 2001-2009

<i>Transition Period</i> (1 120-day period spanning September 23, 2008 to January 20, 2009)			<i>Nontransition Periods</i> (7 120-day periods spanning September 23 to January 20)		
Agency	Number of Regulations	Percentage of Regulations	Agency	Number of Regulations	Percentage of Regulations
Health and Human Services	17	30%	Health and Human Services	51	38%
Transportation	7	13%	Interior	14	10%
Interior	6	11%	Agriculture	14	10%
Joint ^a	5	9%	Transportation	10	7%
Environmental Protection Agency	4	7%	Environmental Protection Agency	8	6%
Agriculture	4	7%	NA	NA	NA
Other Agencies	13	23%	Other Agencies	39	29%
Total	56	100%	Total	136	100%

Source: GAO analysis of published regulations. | GAO-18-183

^aJoint regulations are published by more than one agency.

Appendix II: Additional GAO Analysis of Final Regulations Published During Specified Periods, 1996-2017

Table 6: Agencies Publishing the Largest Number of Final Economically Significant Regulations during President Obama’s Administration, 2009-2017

<i>Transition Period</i> (1 120-day period spanning September 23, 2016 to January 20, 2017)			<i>Nontransition Periods</i> (7 120-day periods spanning September 23 to January 20)		
Agency	Number of Regulations	Percentage of Regulations	Agency	Number of Regulations	Percentage of Regulations
Health and Human Services	17	31%	Health and Human Services	59	36%
Homeland Security	4	7%	Interior	17	10%
Energy	4	7%	Education	13	8%
Transportation	4	7%	Environmental Protection Agency	12	7%
Environmental Protection Agency	4	7%	Agriculture	11	7%
Agriculture	4	7%	NA	NA	NA
Other Agencies	18	33%	Other Agencies	52	32%
Total	55	100%	Total	164	100%

Source: GAO analysis of published regulations. | GAO-18-183

Appendix II: Additional GAO Analysis of Final Regulations Published During Specified Periods, 1996-2017

Table 7: Agencies Publishing the Largest Number of Final Significant Regulations during President Clinton’s Administration, 1996-2001

<i>Transition Period</i> (1 120-day period spanning September 23, 2000 to January 20, 2001)			<i>Nontransition Periods</i> (4 120-day periods spanning September 23 to January 20)		
Agency	Number of Regulations	Percentage of Regulations	Agency	Number of Regulations	Percentage of Regulations
Agriculture	15	14%	Health and Human Services	43	14%
Health and Human Services	12	11%	Agriculture	35	11%
Labor	12	11%	Environmental Protection Agency	25	8%
Interior	8	7%	Office of Personnel Management	22	7%
Environmental Protection Agency	7	7%	Transportation	20	6%
Office of Personnel Management	7	7%	NA	NA	NA
Commerce	7	7%	NA	NA	NA
Other Agencies	39	36%	Other Agencies	163	53%
Total	107	100%	Total	308	100%

Source: GAO analysis of data from Reginfo.gov on the number of draft significant regulations submitted to the Office of Information and Regulatory Affairs for review. | GAO-18-183

Appendix II: Additional GAO Analysis of Final Regulations Published During Specified Periods, 1996-2017

Table 8: Agencies Publishing the Largest Number of Final Significant Regulations during President Bush’s Administration, 2001-2009

<i>Transition Period</i> (1 120-day period spanning September 23, 2008 to January 20, 2009)			<i>Nontransition Periods</i> (7 120-day periods spanning September 23 to January 20)		
Agency	Number of Regulations	Percentage of Regulations	Agency	Number of Regulations	Percentage of Regulations
Health and Human Services	19	14%	Health and Human Services	67	11%
Agriculture	14	10%	Environmental Protection Agency	55	9%
Office of Personnel Management	13	10%	Office of Personnel Management	43	7%
Environmental Protection Agency	11	8%	Agriculture	40	7%
Homeland Security	9	7%	Veterans Affairs	39	7%
Other Agencies	69	51%	Other Agencies	343	58%
Total	135	100%	Total	587	100%

Source: GAO analysis of data from Reginfo.gov on the number of draft significant regulations submitted to the Office of Information and Regulatory Affairs for review. | GAO-18-183

Table 9: Agencies Publishing the Largest Number of Final Significant Regulations during President Obama’s Administration, 2009-2017

<i>Transition Period</i> (1 120-day period spanning September 23, 2016 to January 20, 2017)			<i>Nontransition Periods</i> (7 120-day periods spanning September 23 to January 20)		
Agency	Number of Regulations	Percentage of Regulations	Agency	Number of Regulations	Percentage of Regulations
Environmental Protection Agency	14	12%	Environmental Protection Agency	42	11%
Health and Human Services	8	7%	Health and Human Services	28	7%
Commerce	8	7%	Transportation	26	7%
Transportation	7	6%	Agriculture	25	7%
Office of Personnel Management	6	5%	Commerce	23	6%
Other Agencies	74	63%	Other Agencies	235	62%
Total	117	100%	Total	379	100%

Source: GAO analysis of data from Reginfo.gov on the number of draft significant regulations submitted to the Office of Information and Regulatory Affairs for review. | GAO-18-183

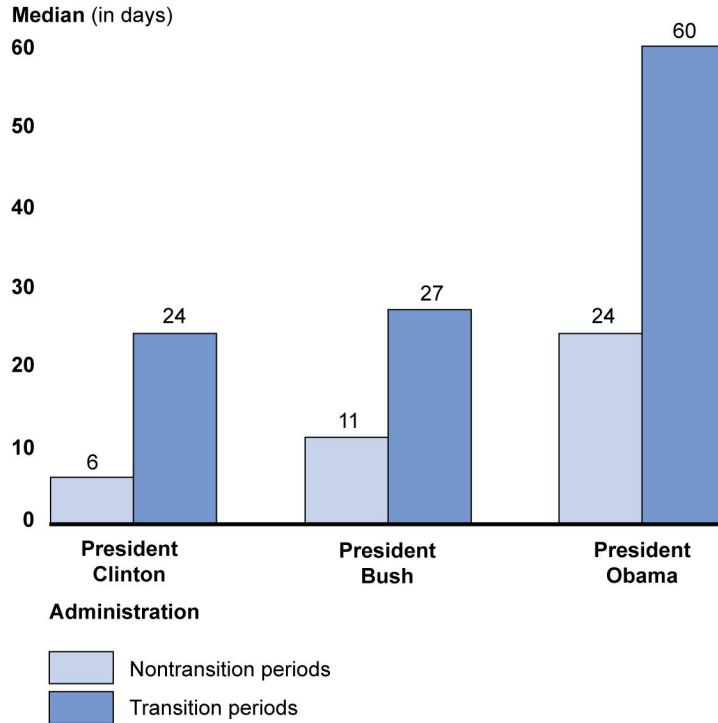
Agencies can indicate on Reginfo.gov whether they are required by a statutory or judicial deadline to promulgate a regulation. We did additional analysis for economically significant regulations and found agencies were

less likely to indicate they were under such a deadline during the three administrations' transition periods compared to nontransition periods.¹

Under E.O. 12866, agencies are expected to submit regulations deemed significant to OIRA for review. Nearly all regulations we reviewed had been reviewed by OIRA. For a small number of economically significant regulations (13 across all periods or approximately 2 percent of the economically significant population), we could not find evidence on Reginfo.gov that OIRA reviewed the regulation. However, the absence of evidence on Reginfo.gov does not necessarily mean that OIRA did not review those regulations and may instead indicate that the review dates were not entered into Reginfo.gov. Our review found that the median length of OIRA's review increased for economically significant regulations during each transition. (See figure 15.) For significant regulations, there were no statistical differences among the three transition periods and compared to nontransition periods combined. (See figure 16.)

¹The specific data were 33 percent during President Clinton's transition period compared to 37 percent during nontransition periods; 34 percent during President Bush's transition period compared to 46 percent during nontransition periods, and 31 percent during President Obama's transition period compared to 49 percent during nontransition periods.

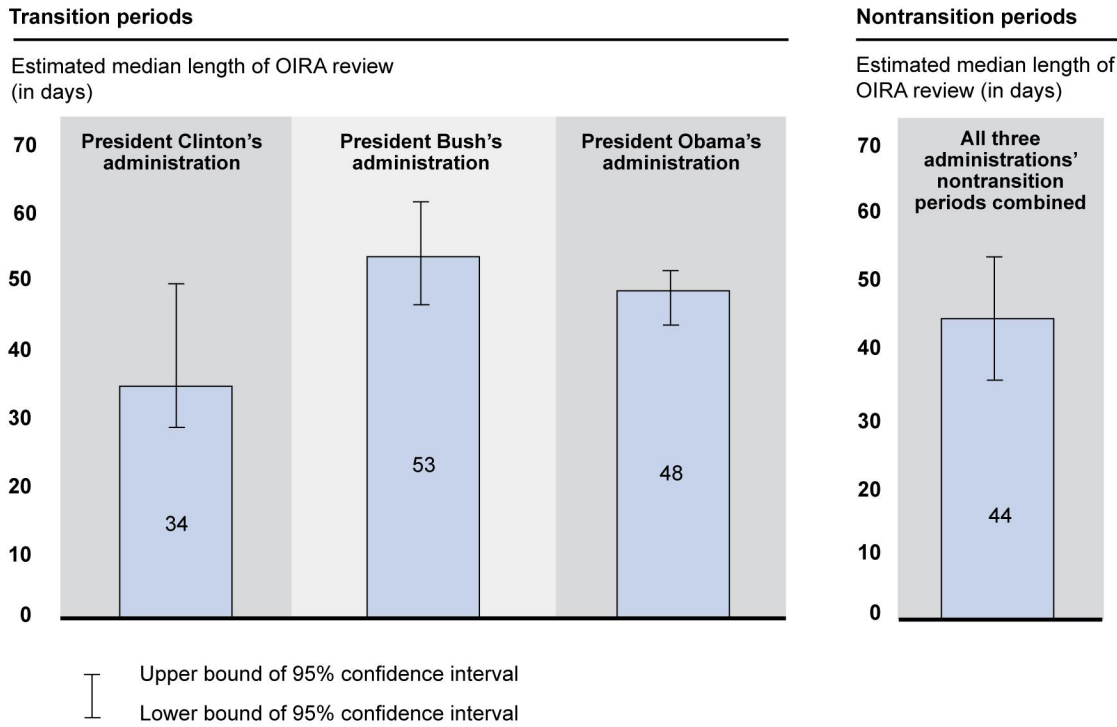
Figure 15: Median Length of OIRA Review (in Days) of Draft Final Economically Significant Regulations Published during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of data from Reginfo.gov. | GAO-18-183

Note: This excludes 13 economically significant regulations across all periods for which we could not find data concerning OIRA's review.

Figure 16: Median Length of OIRA Review (in Days) of Draft Final Significant Regulations Published during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of data from Reginfo.gov. | GAO-18-183

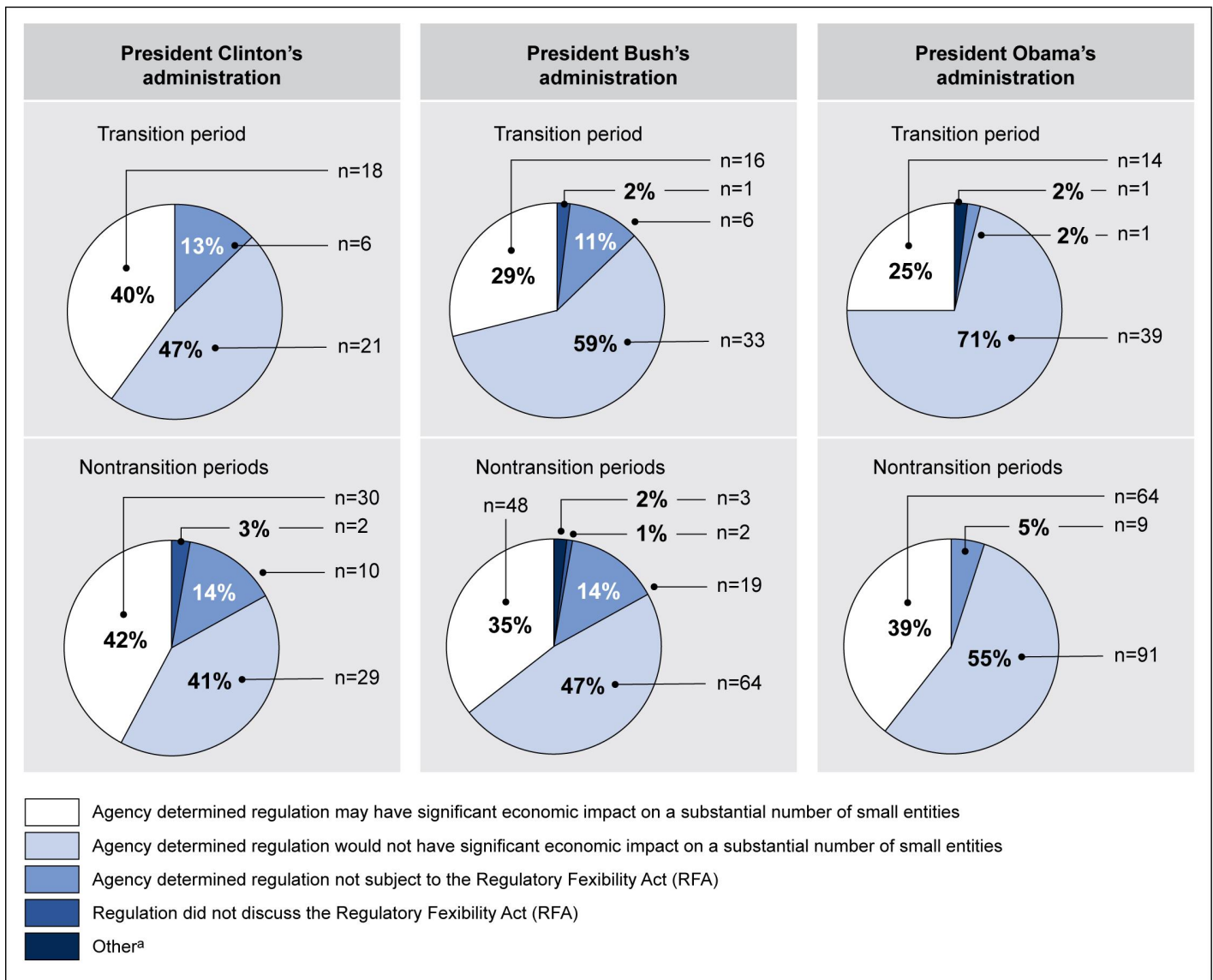
Analyses of Indicators Related to Agencies' Reported Compliance with Selected Procedural Requirements for Promulgating Regulations

In this section, we provide additional information from our analyses of:

- agencies' determinations regarding their regulations under the Regulatory Flexibility Act (RFA);
- agencies' determinations regarding their regulations under the Paperwork Reduction Act (PRA);
- agencies' determinations regarding their regulations under the Unfunded Mandates Reform Act of 1995 (UMRA); and
- Congressional Review Act (CRA) noncompliance rates for the agencies publishing the largest number of regulations.

We reviewed agencies' discussions of three procedural requirements—RFA, PRA, and UMRA—for economically significant regulations. (Figures 17-19 summarize the determinations agencies reached.)

Figure 17: Agency Determinations under the Regulatory Flexibility Act Regarding the Effect of Final Economically Significant Regulations on Small Entities during Specified Transition and Nontransition Periods, 1996-2017



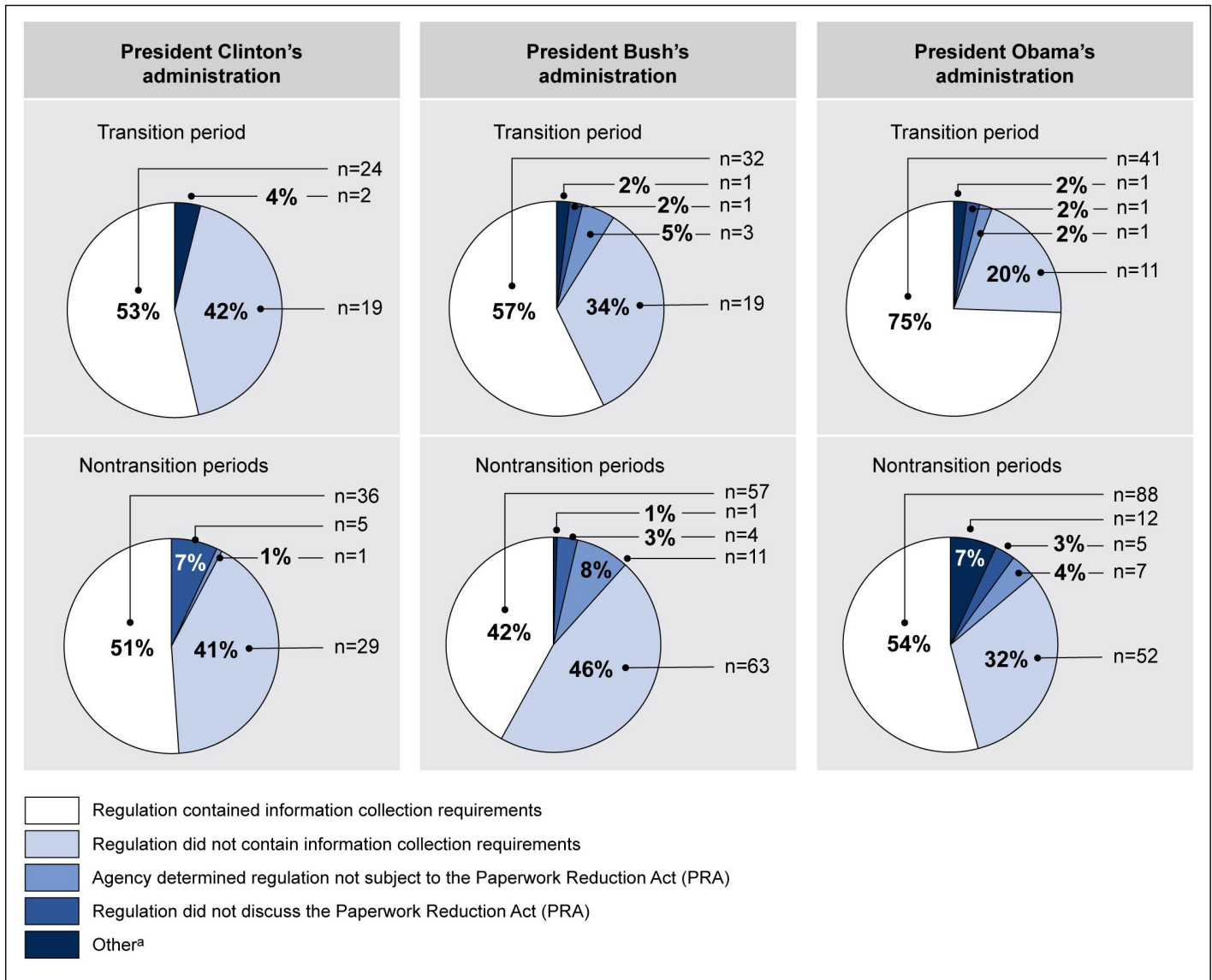
Source: GAO analysis of published regulations. | GAO-18-183

Note: Some percentages do not add up to 100 percent due to rounding.

Appendix II: Additional GAO Analysis of Final Regulations Published During Specified Periods, 1996-2017

^a "Other" includes regulations that we could not classify into one of the other categories because the agency's discussion of RFA was unclear.

Figure 18: Agency Determinations under the Paperwork Reduction Act Regarding the Effect of Final Economically Significant Regulations on Information Collection Requirements during Specified Transition and Nontransition Periods, 1996-2017



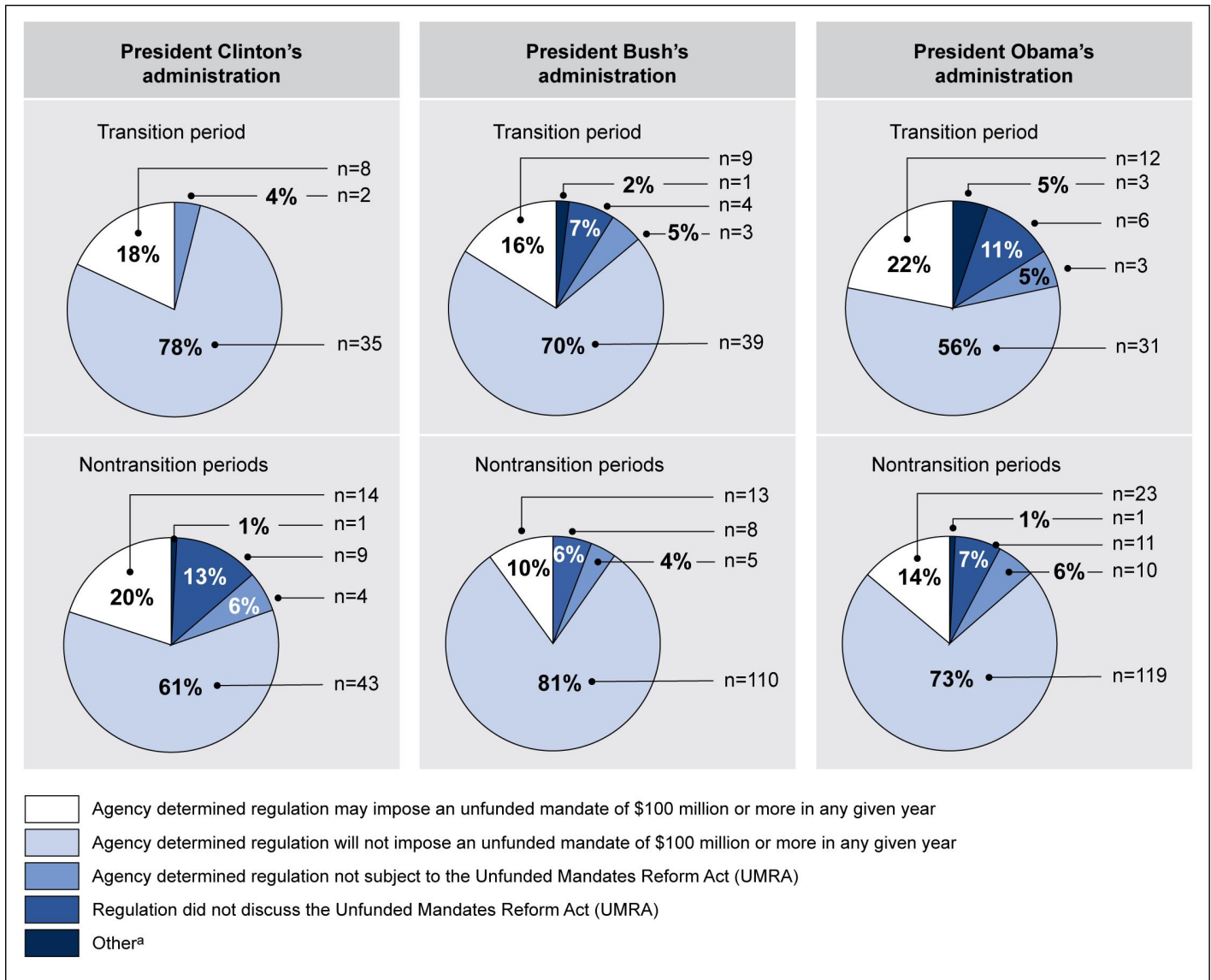
Source: GAO analysis of published regulations. | GAO-18-183

Note: Some percentages do not add up to 100 percent due to rounding.

^a "Other" includes regulations that we could not classify into one of the other categories because the agency's discussion of PRA was unclear. This category also includes regulations for which the

agency modified information collection requirements, but determined that those changes would result in decreased regulatory burden.

Figure 19: Agency Determinations under the Unfunded Mandates Reform Act of 1995 Regarding the Effect of Final Economically Significant Regulations on Unfunded Mandates during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of published regulations. | GAO-18-183

Note: Some percentages do not add up to 100 percent due to rounding.

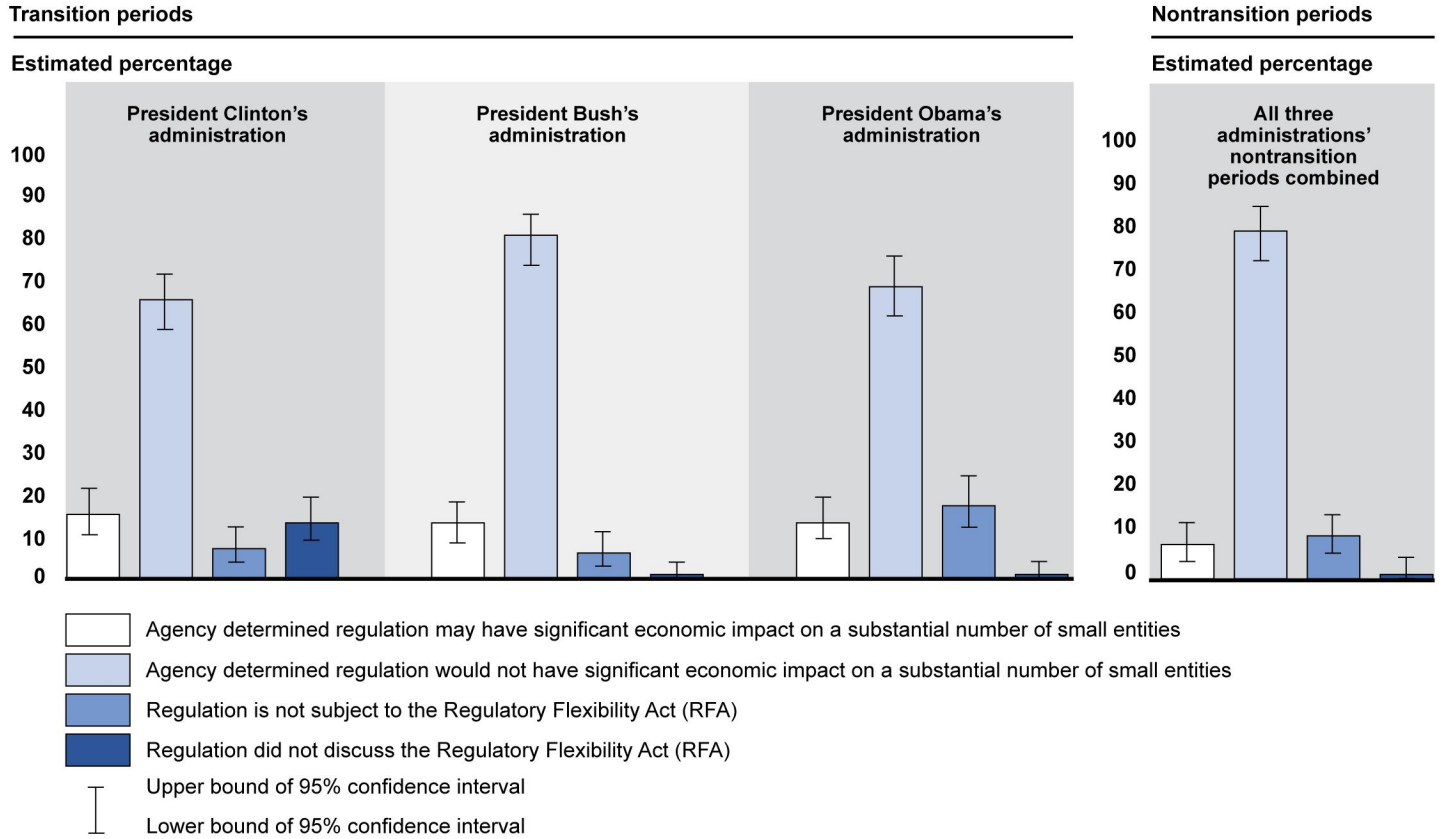
^a "Other" includes regulations that we could not classify into one of the other categories because the agency's discussion of UMRA was unclear.

We reviewed agencies' discussions of three procedural requirements—RFA, PRA, and UMRA—for significant regulations. Figures 20-22 summarize the determinations agencies reached. We found the following statistical differences in comparing the determinations agencies reached for significant regulations:

- *RFA*: There were no statistical differences among the three transition periods and nontransition periods in the determination that regulations might have a significant economic impact on a substantial number of small entities. Regulations published during President Clinton's transition period were less likely than regulations published during President Bush's transition period and nontransition periods to determine that the regulation would not have a significant economic impact on a substantial number of small entities. There were no statistical differences between Presidents Clinton's and Obama's transition periods for this determination under RFA. We also found statistical differences in the remaining two categories—regulations not subject to RFA and those not discussing RFA.²
- *PRA*: Significant regulations published during Presidents Obama's and Clinton's transition periods more frequently contained information collection requirements covered by PRA compared to nontransition periods. In addition, significant regulations published during President Clinton's transition period more frequently contained information collections requirements compared to President Bush's transition period. There were no other statistical differences in significant regulations containing information collection requirements. For the other categories, there were no statistical differences, except that significant regulations published during nontransition periods were less likely to discuss PRA than those published during President Obama's transition period.
- *UMRA*: There were no statistical differences among the transition and nontransition periods in potential federal mandates covered by UMRA.

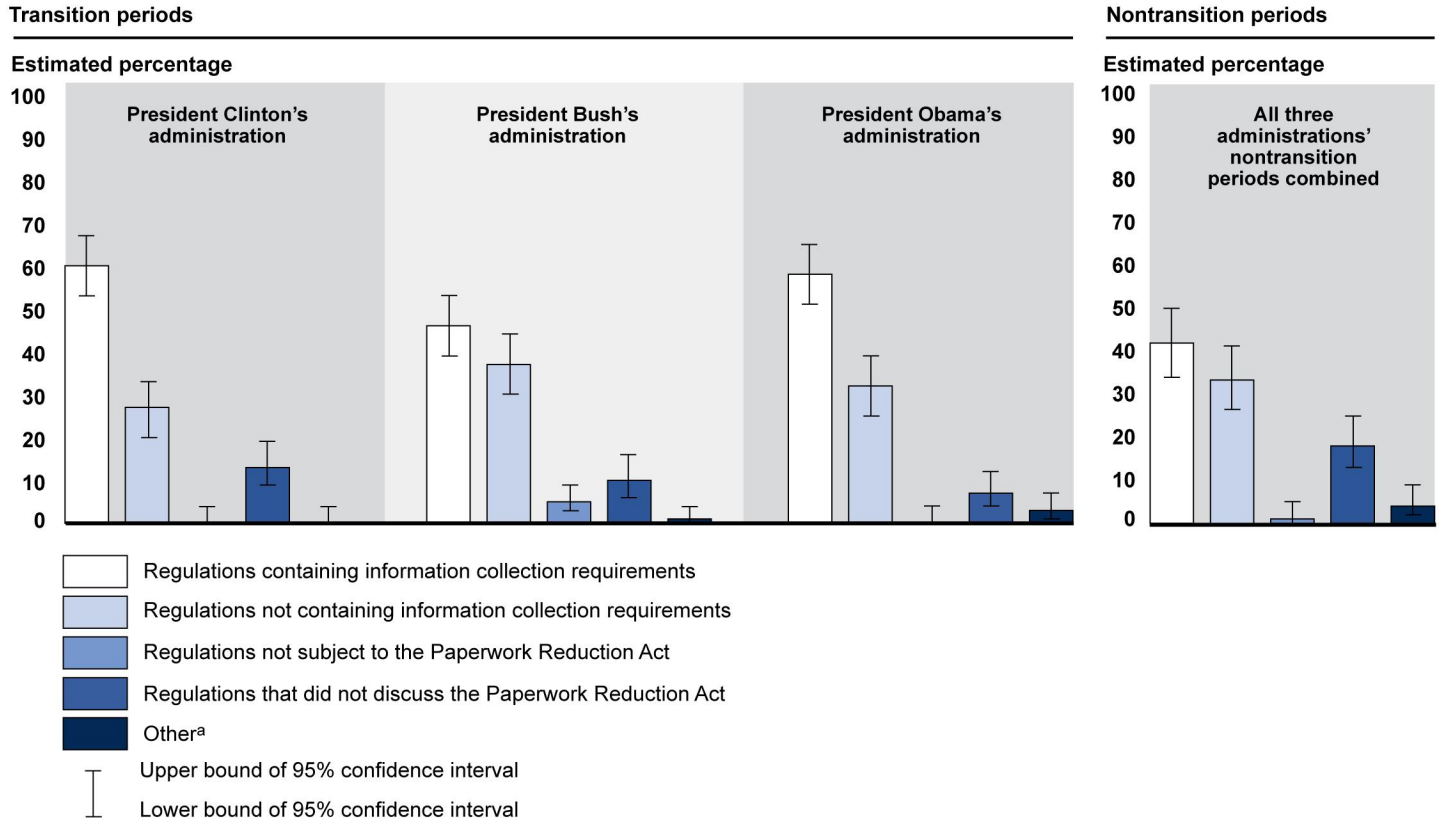
²For regulations not subject to RFA, the one statistical difference was that regulations published during President Obama's transition period were more likely to assert this determination than regulations published during President Clinton's transition period. Agencies were less likely during President Clinton's transition period to discuss RFA than during the two other transition periods and nontransition periods.

Figure 20: Agency Determinations under the Regulatory Flexibility Act Regarding the Effect of Final Significant Regulations on Small Entities during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of published regulations. | GAO-18-183

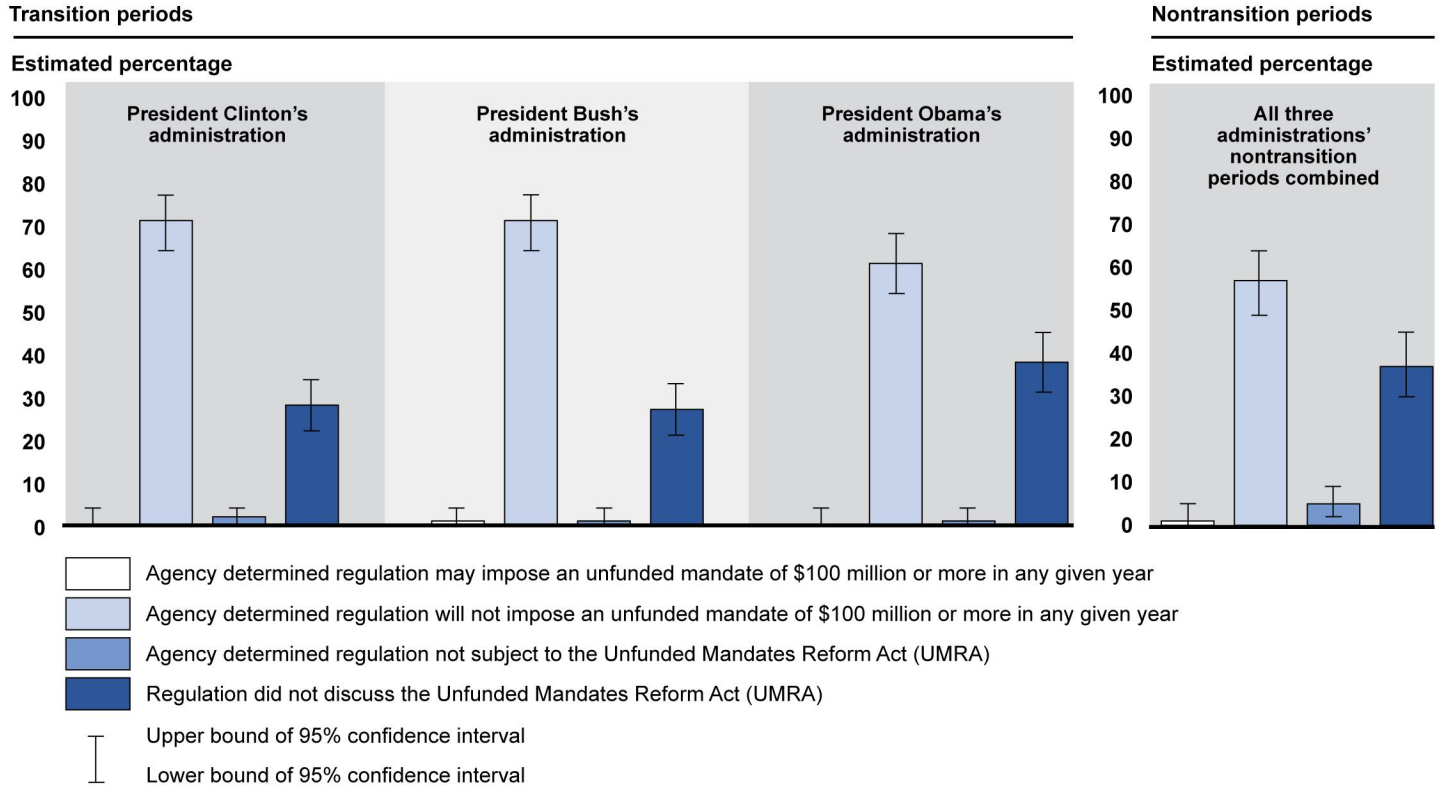
Figure 21: Agency Determinations under the Paperwork Reduction Act Regarding the Effect of Final Significant Regulations on Information Collection Requirements during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of published regulations. | GAO-18-183

^a"Other" includes regulations that we could not classify into one of the other categories because the agency's discussion of PRA was unclear.

Figure 22: Agency Determinations under the Unfunded Mandates Reform Act of 1995 Regarding the Effect of Significant Final Regulations on Unfunded Mandates during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of published regulations. | GAO-18-183

We examined the CRA noncompliance rates for the agencies publishing the largest number of economically significant regulations. (See table 10).

Table 10: Congressional Review Act Noncompliance Rates among the Most Active Regulatory Agencies for Final Economically Significant Regulations Published during Specified Transition and Nontransition Periods, 1996-2017

Transition Periods (3 120-day periods spanning September 23 to January 20 of 2000-2001, 2008-2009, and 2016-2017)				Nontransition Periods (18 120-day periods spanning September 23 to January 20)			
Agency	Number of Regulations Published	Number of Noncompliant Regulations	Noncompliance Rate	Agency	Number of Regulations Published	Number of Noncompliant Regulations	Noncompliance Rate
Transportation	11	6	55%	Transportation	21	9	43%
Health and Human Services	46	19	41%	Health and Human Services	131	46	35%
<i>Government-wide Rate</i>	156	42	27%	<i>Government-wide Rate</i>	371	90	24%
Agriculture	18	4	22%	Agriculture	34	5	15%
Labor	11	2	18%	Environmental Protection Agency	31	2	6%
Interior	12	1	8%	Interior	44	0	0%
Environmental Protection Agency	14	0	0%	NA	NA	NA	

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

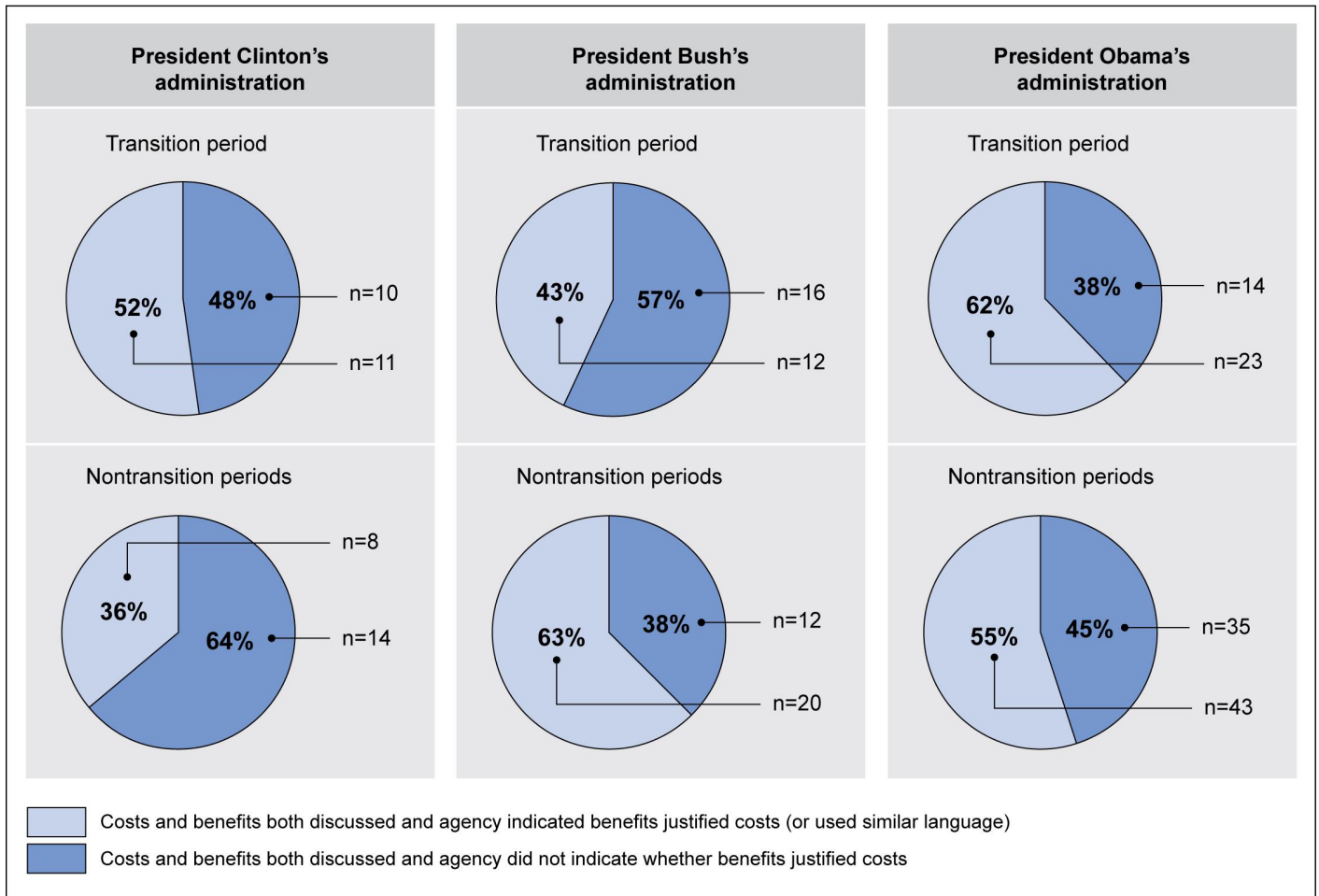
Analyses of Indicators Related to the Anticipated Economic Effects Agencies Reported would Result from the Regulations

In this section, we provide additional information from our analyses of the extent to which:

- agencies indicated benefits justified costs for economically significant final regulations;
- agencies estimated net costs or benefits for economically significant final regulations; and
- agencies anticipated costs, benefits, or transfers resulting from significant regulations.

We examined additional indicators related to the economic analyses that E.O. 12866 and Circular A-4 encourage agencies to conduct when promulgating regulations. E.O. 12866 states that an agency should propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. We examined the extent to which agencies indicated that the anticipated benefits from economically significant regulations would justify their costs and found that agencies during Presidents Clinton's and Obama's transition periods were more likely to indicate that benefits justified costs compared to these administrations' nontransition periods. (See figure 23.) During President Bush's transition period, agencies were less likely to indicate that the anticipated benefits of the regulation would justify its anticipated costs. We did not extend this analysis to significant regulations because the examples were too limited to provide statistically reliable estimates for the three transition periods and nontransition periods combined.

Figure 23: Extent to Which Agencies Indicated Benefits Justified Costs for a Subset of Final Economically Significant Regulations Published during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of published regulations. | GAO-18-183

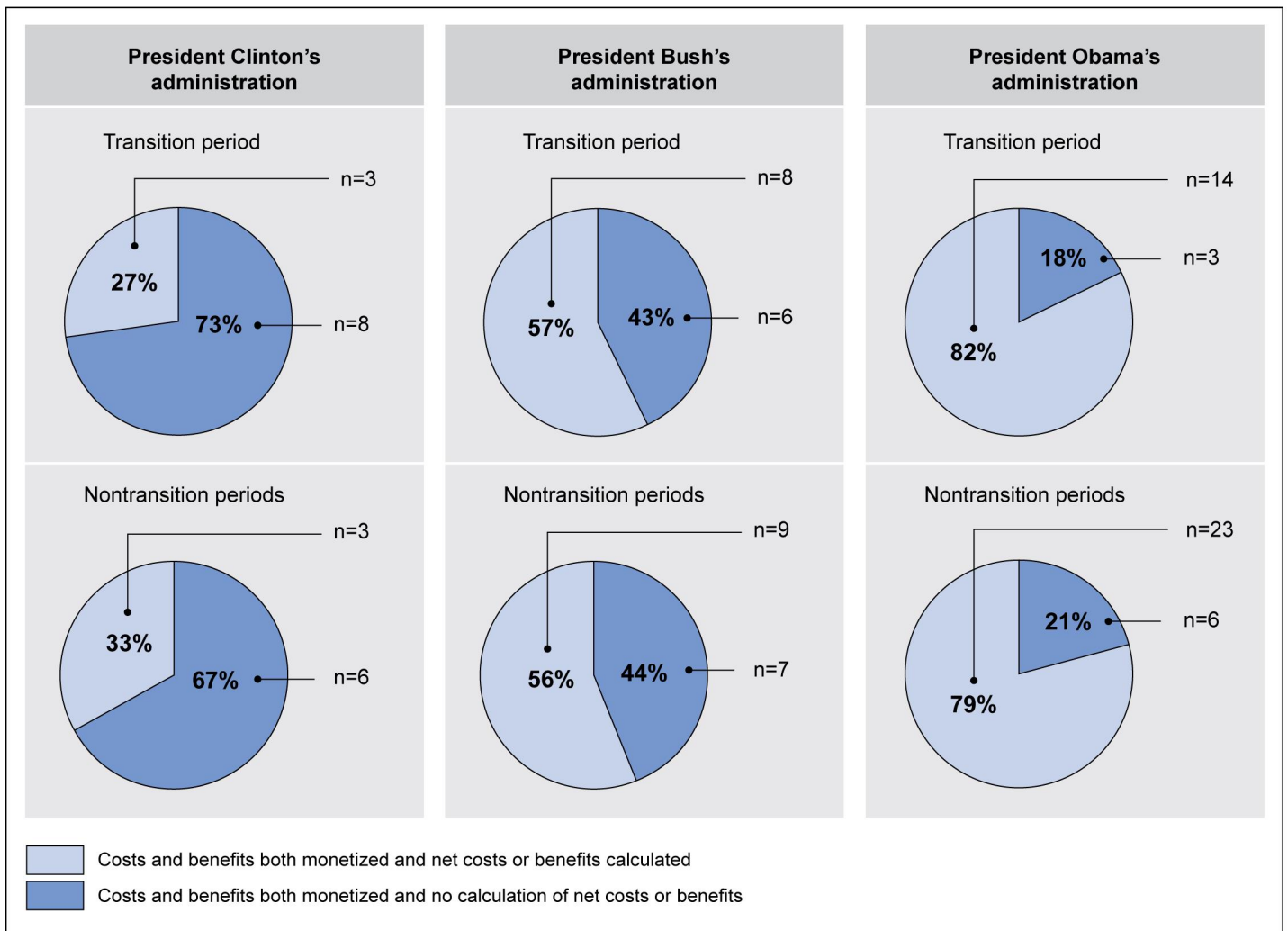
Notes: This analysis was only applicable to the subset of 236 economically significant regulations that discussed both costs and benefits. We excluded 18 of these regulations for which agencies had made unclear statements.

Some percentages do not add up to 100 percent due to rounding.

Monetizing both costs and benefits potentially allows an agency to calculate the net costs or benefits of a regulation and thus estimate how much better or worse off society will be as a result of the chosen regulatory approach. We found that agencies during Presidents Bush's and Obama's administrations, during both transition and nontransition periods, were more likely to calculate net costs or benefits than agencies during President Clinton's transition and nontransition periods. (See figure

24.) We did not extend this analysis to significant regulations because the examples were too limited to provide statistically reliable estimates for the three transition periods and nontransition periods combined.

Figure 24: Extent to Which Agencies Estimated Net Costs or Benefits for a Subset of Final Economically Significant Regulations Published during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of published regulations. | GAO-18-183

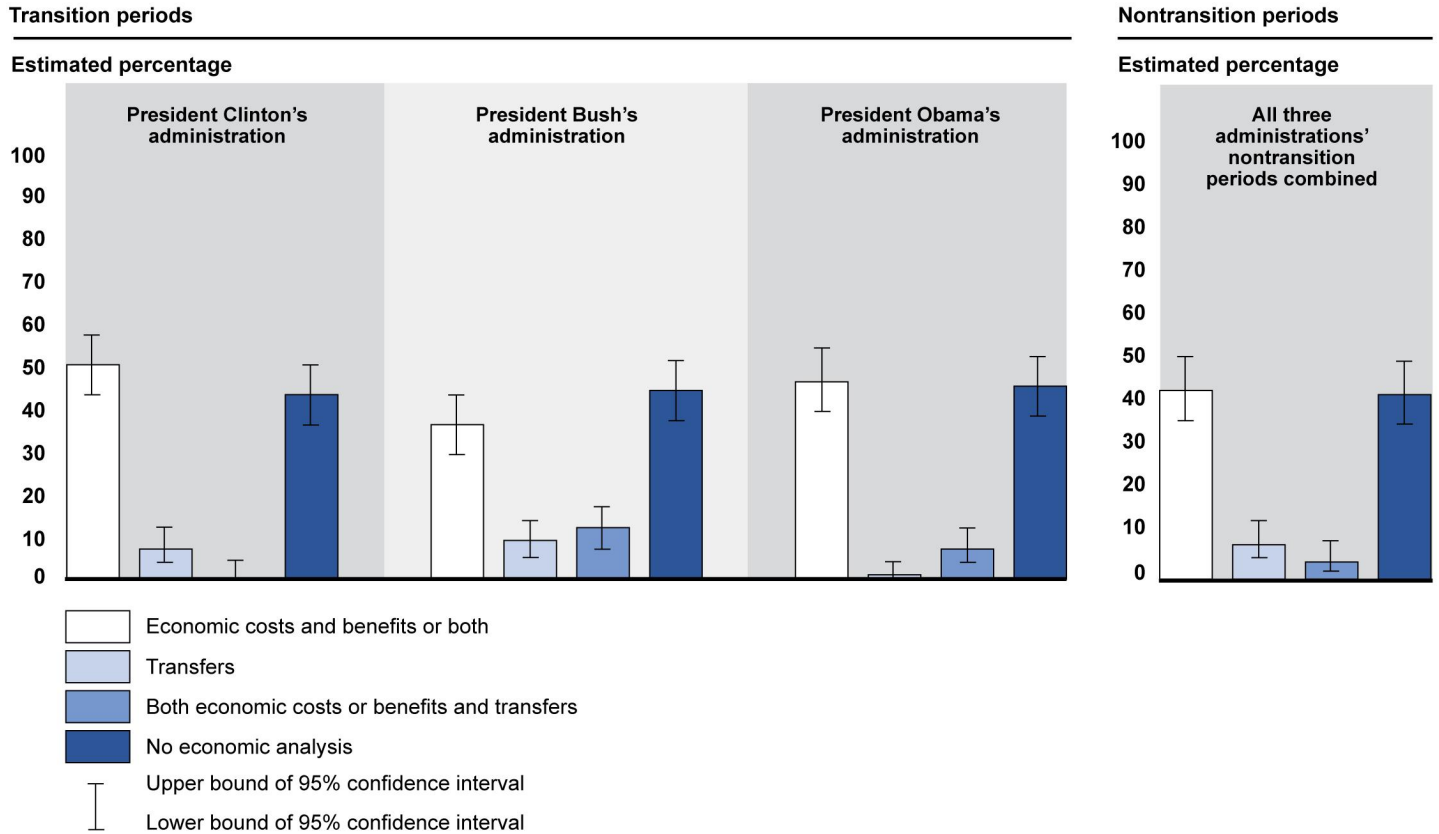
Note: This analysis was only applicable to the subset of 113 economically significant regulations that monetized both costs and benefits. We excluded 17 of these regulations for which agencies had made unclear statements.

For significant regulations that did identify anticipated costs, benefits, or transfers, we found the following statistical differences in comparing the

three transition periods and nontransition periods combined as explained below and in figure 25:

- **Economic Costs or Benefits or Both:** For regulations falling into this category, the only statistical difference we found was that agencies were more likely during President Clinton's transition period to identify anticipated economic costs or benefits or both compared to President Bush's transition period.
- **Transfers:** For regulations falling into this category, the only statistical difference we found was that agencies were less likely during President Obama's transition period to identify anticipated transfers compared to President Bush's transition period and all three administrations' nontransition periods combined.
- **Both economic costs or benefits and transfers:** For regulations falling into this category, the only statistical difference we found was that agencies were less likely during President Clinton's transition period to indicate this compared to President Bush's transition period.
- **No economic analysis:** An estimated 43 percent of significant regulations across all periods reviewed contained no economic analysis and there were no statistical differences among the three transition periods reviewed and the nontransition periods combined.

Figure 25: Estimated Percentage of Final Significant Regulations with Anticipated Economic Costs, Benefits, and Transfers during Specified Transition and Nontransition Periods, 1996-2017



Source: GAO analysis of published regulations. | GAO-18-183

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the individual named above, Tim Bober (Assistant Director), Michael O'Neill (Analyst in Charge), Carl Barden, Tim Guinane, Krista Loose, Ned Malone, Alexander Ray, Cynthia Saunders, Christie Stassel, and Andrew J. Stephens made key contributions to this report. Donna Miller, John Hussey, Steven Flint, and Rob Letzler also contributed.

Appendix IV: Accessible Data

Data Tables

Data Table for Highlights figure, Economically Significant Regulations Determined to be Noncompliant with the Congressional Review Act

	Clinton Non- Transition %	Clinton Transition %	Bush Nontransition %	Bush Transition %	Obama Nontransition %	Obama Transition %	All Nontransition Periods %	All Transition Periods %
Non-compliant	20	18	24	25	27	36	25	27

Data Table for Figure 1: Number of Final Economically Significant Regulations Published during Specified Transition and Nontransition Periods, 1996-2017

	Covered period	Number	Number of ES regulations typically promulgated annually
President Clinton's Administration	1996-1997	22	7
	1997-1998	18	8
	1998-1999	19	8
	1999-2000	12	5
	2000-2001 (transition period)	45	8
President Bush's administration	2001-2002	19	8
	2002-2003	16	5
	2003-2004	26	10
	2004-2005	19	7
	2005-2006	18	9
	2006-2007	16	4
	2007-2008	22	6
	2008-2009 (transition period)	56	10
President Obama's administration	2009-2010	29	9
	2010-2011	24	9
	2011-2012	17	8
	2012-2013	14	6
	2013-2014	22	7
	2014-2015	25	9

Covered period	Number	Number of ES regulations typically promulgated annually
2015-2016	33	9
2016-2017 (transition period)	55	8

Data Table for Figure 2: Number of Final Significant Regulations Published during Specified Transition and Nontransition Periods, 1996-2017

	Covered period	Number
President Clinton's Administration	1996-1997	90
	1997-1998	59
	1998-1999	68
	1999-2000	91
	2000-2001 (transition period)	107
President Bush's administration	2001-2002	76
	2002-2003	83
	2003-2004	126
	2004-2005	65
	2005-2006	83
	2006-2007	83
	2007-2008	71
	2008-2009 (transition period)	135
President Obama's administration	2009-2010	89
	2010-2011	97
	2011-2012	70
	2012-2013	28
	2013-2014	28
	2014-2015	29
	2015-2016	38
	2016-2017 (transition period)	117

Data Table for Figure 3: Final Economically Significant Regulations Appearing in the Previous Spring's Unified Agenda during Specified Transition and Nontransition Periods, 1996-2017

	Clinton Nontransition % (N)	Clinton Transition % (N)	Bush Nontransition % (N)	Bush Transition % (N)	Obama Nontransition % (N)	Obama Transition % (N)
Appeared in the previous spring's agenda or before	79% (56)	71% (32)	69% (94)	88% (49)	82% (135)	95% (52)
Did not appear in the previous spring's agenda or before	21% (15)	29% (13)	31% (42)	13% (7)	18% (29)	5% (3)

Data Table for Figure 4: Final Significant Regulations Appearing in the Previous Spring's Unified Agenda during Specified Transition and Nontransition Periods, 1996-2017

Estimated Percentage of Significant Regulations Appearing in the Previous Spring's Unified Agenda

Administration	Point Estimate	Lower Bound of 95% Confidence Interval (%)	Upper Bound of 95% Confidence Interval (%)
Nontransition	79	72	85
Clinton Transition	74	67	80
Bush Transition	86	80	91
Obama Transition	87	81	91

Estimated Percentage of Significant Regulations Not Appearing in the Previous Spring's Unified Agenda

Administration	Point Estimate (%)	Lower Bound of 95% Confidence Interval (%)	Upper Bound of 95% Confidence Interval (%)
Nontransition	21	15	28
Clinton Transition	27	20	33
Bush Transition	14	10	20
Obama Transition	13	9	19

Data Table Figure 5: Final Economically Significant Regulations Preceded by a Notice of Proposed Rulemaking during Specified Transition and Nontransition Periods, 1996-2017

	Clinton Non-Transition % (N)	Clinton Transition % (N)	Bush Nontransition % (N)	Bush Transition % (N)	Obama Nontransition % (N)	Obama Transition % (N)
Preceded by Proposed Regulation	65% (46)	78% (35)	60% (82)	79% (44)	74% (122)	82% (45)
No Prior Proposed Regulation	35% (25)	22% (10)	40% (54)	21% (12)	26% (42)	18% (10)

Data Table Figure 6: Final Significant Regulations Preceded by a Notice of Proposed Rulemaking during Specified Transition and Nontransition Periods, 1996-2017

Estimated Percentage of Significant Regulations Preceded by proposed regulation

Administration	Point Estimate (%)	Lower Bound of 95% Confidence Interval (%)	Upper Bound of 95% Confidence Interval (%)
Non-transition	64	56	71
Clinton Transition	82	76	87
Bush Transition	78	72	84
Obama Transition	77	71	83

Estimated Percentage of Significant Regulations Not Preceded by proposed regulation

Administration	Point Estimate (%)	Lower Bound of 95% Confidence Interval (%)	Upper Bound of 95% Confidence Interval (%)
Non-transition	36	29	44
Clinton Transition	18	13	24
Bush Transition	22	16	28
Obama Transition	23	17	29

Data Table Figure 8: Final Economically Significant Regulations Determined to be Noncompliant with the Congressional Review Act during Specified Transition and Nontransition Periods, 1996-2017

	Clinton Nontransition % (n)	Clinton Transition % (n)	Bush Nontransition % (n)	Bush Transition % (n)	Obama Nontransition % (n)	Obama Transition % (n)	All periods %
Non-compliant	20% (14)	18% (8)	24* (33)	25% (14)	27% (45)	36% (20)	25.4

Data Table Figure 9: Final Significant Regulations Determined to be Noncompliant with the Congressional Review Act during Specified Transition and Nontransition Periods, 1996-2017

Administration	Point Estimate	Noncompliance Rates	
		Lower Bound of 95% Confidence Interval	Upper Bound of 95% Confidence Interval
Clinton Transition	19	14	25
Bush Transition	10	6	16
Obama Transition	12	7	17
Nontransition	15	10	22

Data Table Figure 10: Number of Final Economically Significant Regulations with Anticipated Economic Costs, Benefits, and Transfers during Specified Transition and Nontransition Periods, 1996-2017

	1996-2000 Clinton				2000-2008 Bush				2008-2016 Obama			
	Nontransition		Transition		Nontransition		Transition		Nontransition		Transition	
	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent
Economic costs and benefits or both	21	30%	19	42%	45	33%	25	45%	61	37%	26	47%
Transfers	27	38%	17	38%	66	49%	17	30%	52	32%	5	9%
Economic costs or benefits and transfers	7	10%	4	9%	14	10%	9	16%	50	30%	24	44%
No economic analysis	16	23%	5	11%	11	8%	5	9%	1	1%	0	0%

Data Table Figure 11: Extent to Which Agencies Monetized Anticipated Economic Costs Resulting from Final Economically Significant Regulations during Specified Transition and Nontransition Periods, 1996-2017

	1996-2000 Clinton				2000-2008 Bush				2008-2016 Obama			
	Nontransition		Transition		Nontransition		Transition		Nontransition		Transition	
	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent
Monetized costs	24	92%	21	95%	40	87%	30	97%	78	93%	41	91%
Quantified or qualitatively described costs	2	8%	1	5%	6	13%	1	3%	6	7%	4	9%

Data Table Figure 12: Extent to Which Agencies Monetized Anticipated Economic Benefits Resulting from Final Economically Significant Regulations during Specified Transition and Nontransition Periods, 1996-2017

	1996-2000 Clinton				2000-2008 Bush				2008-2016 Obama			
	Nontransition		Transition		Nontransition		Transition		Nontransition		Transition	
	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent
Monetized benefits	11	46%	11	48%	32	64%	17	52%	54	52%	23	48%
Quantified or qualitatively described benefits	13	54%	12	52%	18	36%	16	48%	50	48%	25	52%

Data Table Figure 13: Extent to Which Agencies Monetized Anticipated Transfers Resulting from Final Economically Significant Regulations during Specified Transition and Nontransition Periods, 1996-2017

	1996-2000 Clinton				2000-2008 Bush				2008-2016 Obama					
	Nontransition		Transition		Nontransition		Transition		Nontransition		Transition			
	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent		
Monetized transfers			30	88%	19	90%	75	94%	25	96%	92	90%	28	97%
Quantified or qualitatively described transfers			4	12%	2	10%	5	6%	1	4%	10	10%	1	3%

Data Table Figure 14: Rate of Final Economically Significant Regulatory Activity Occurring Before and After the 2000, 2008, and 2016 Elections Preceding Presidential Transitions

Average Number of ES Regulations Promulgated Per Week	Clinton Nontransition	Clinton Transition	Bush Nontransition	Bush Transition	Obama Nontransition	Obama Transition
Sep. 23 to Election Day	1.8	2.0	1.5	3.5	1.6	2.5
Election Day to Jan. 20	0.7	3.0	1.0	3.2	1.2	3.6

Data Table Figure 15: Median Length of OIRA Review (in Days) of Draft Final Economically Significant Regulations Published during Specified Transition and Nontransition Periods, 1996-2017

	Clinton Nontransition	Clinton Transition	Bush Nontransition	Bush Transition	Obama Nontransition	Obama Transition
Median OIRA Review Time (in days)	6	24	11	27	24	60

Data Table Figure 16: Median Length of OIRA Review (in Days) of Draft Final Significant Regulations Published during Specified Transition and Nontransition Periods, 1996-2017

Administration	Median Estimated Length of OIRA Review (Days) for Significant Regulations		
	Point Estimate	Lower Bound of 95% Confidence Interval	Upper Bound of 95% Confidence Interval
Nontransition	44	35	53
Clinton Transition	34	28	49
Bush Transition	53	46	61
Obama Transition	48	43	51

Data Table Figure 17: Agency Determinations under the Regulatory Flexibility Act Regarding the Effect of Final Economically Significant Regulations on Small Entities during Specified Transition and Nontransition Periods, 1996-2017

Categories	1996-2000 Clinton				2000-2008 Bush				2008-2016 Obama			
	Nontransition		Transition		Nontransition		Transition		Nontransition		Transition	
	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent
Agency determined regulation may have significant economic impact on a substantial number of small entities	30	42%	18	40%	48	35%	16	29%	64	39%	14	25%
Agency determined regulation would not have significant economic impact on a substantial number of small entities	29	41%	21	47%	64	47%	33	59%	91	55%	39	71%
Agency determined regulation not subject to RFA	10	14%	6	13%	19	14%	6	11%	9	5%	1	2%
Regulation did not discuss RFA	2	3%	0	0%	2	1%	1	2%	0	0%	0	0%
Other	0	0%	0	0%	3	2%	0	0%	0	0%	1	2%

Data Table Figure 18: Agency Determinations under the Paperwork Reduction Act Regarding the Effect of Final Economically Significant Regulations on Information Collection Requirements during Specified Transition and Nontransition Periods, 1996-2017

Category	1996-2000 Clinton				2000-2008 Bush				2008-2016 Obama			
	Nontransition		Transition		Nontransition		Transition		Nontransition		Transition	
	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent
Regulation contained information collection requirements	36	51%	24	53%	57	42%	32	57%	88	54%	41	75%
Regulation did not contain information collection requirements	29	41%	19	42%	63	46%	19	34%	52	32%	11	20%
Agency determined regulation not subject to PRA	1	1%	0	0%	11	8%	3	5%	7	4%	1	2%
Regulation did not discuss PRA	5	7%	0	0%	4	3%	1	2%	5	3%	1	2%
Other	0	0%	2	4%	1	1%	1	2%	12	7%	1	2%

Data Table Figure 19: Agency Determinations under the Unfunded Mandates Reform Act of 1995 Regarding the Effect of Final Economically Significant Regulations on Unfunded Mandates during Specified Transition and Nontransition Periods, 1996-2017

Categories	1996-2000 Clinton				2000-2008 Bush				2008-2016 Obama			
	Nontransition		Transition		Nontransition		Transition		Nontransition		Transition	
	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent
Agency determined regulation may impose an unfunded mandate of \$100 million or more	14	20%	8	18%	13	10%	9	16%	23	14%	12	22%
Agency determined regulation will not impose an unfunded mandate of \$100 million or more	43	61%	35	78%	110	81%	39	70%	119	73%	31	56%
Agency determined regulation not subject to UMRA	4	6%	2	4%	5	4%	3	5%	10	6%	3	5%
Regulation did not discuss UMRA	9	13%	0	0%	8	6%	4	7%	11	7%	6	11%
Other	1	1%	0	0%	0	0%	1	2%	1	1%	3	5%

Data Table Figure 20: Agency Determinations under the Regulatory Flexibility Act Regarding the Effect of Final Significant Regulations on Small Entities during Specified Transition and Nontransition Periods, 1996-2017

Administration	Category	Point Estimate (%)	Lower Bound of 95% Confidence Interval (%)	Upper Bound of 95% Confidence Interval (%)
Nontransition	Agency determined regulation may have significant economic impact on a substantial number of small entities	8	4	13
	Agency determined regulation would not have significant economic impact on a substantial number of small entities	81	74	87
	Regulation is not subject to RFA	10	6	15
	Regulation did not discuss RFA	1	0	5
Clinton Transition	Agency determined regulation may have significant economic impact on a substantial number of small entities	15	10	21
	Agency determined regulation would not have significant economic impact on a substantial number of small entities	65	58	71
	Regulation is not subject to RFA	7	4	12
	Regulation did not discuss RFA	13	9	19

Appendix IV: Accessible Data

Administration	Category	Point Estimate (%)	Lower Bound of 95% Confidence Interval (%)	Upper Bound of 95% Confidence Interval (%)
Bush Transition	Agency determined regulation may have significant economic impact on a substantial number of small entities	13	8	18
	Agency determined regulation would not have significant economic impact on a substantial number of small entities	80	73	85
	Regulation is not subject to RFA	6	3	11
	Regulation did not discuss RFA	1	0	4
Obama Transition	Agency determined regulation may have significant economic impact on a substantial number of small entities	13	9	19
	Agency determined regulation would not have significant economic impact on a substantial number of small entities	68	61	75
	Regulation is not subject to RFA	17	12	24
	Regulation did not discuss RFA	1	0	4

Data Table Figure 21: Agency Determinations under the Paperwork Reduction Act Regarding the Effect of Final Significant Regulations on Information Collection Requirements during Specified Transition and Nontransition Periods, 1996-2017

Administration	Category	Point Estimate (%)	Lower Bound of 95% Confidence Interval (%)	Upper Bound of 95% Confidence Interval (%)
Nontransition	Regulations containing information collection requirements	42	34	50
	Regulations not containing information collection requirements	34	27	42
	Regulations not subject to the Paperwork Reduction Act	1	0	5
	Regulations that did not discuss Paperwork Reduction Act	18	13	25
	Other	4	2	9
Clinton Transition	Regulations containing information collection requirements	60	53	67
	Regulations not containing information collection requirements	27	20	33
	Regulations not subject to the Paperwork Reduction Act	0	0	4
	Regulations that did not discuss Paperwork Reduction Act	13	9	19
	Other	0	0	4
Bush Transition	Regulations containing information collection requirements	46	39	53
	Regulations not containing information collection requirements	37	30	44
	Regulations not subject to the Paperwork Reduction Act	5	3	9
	Regulations that did not discuss Paperwork Reduction Act	10	6	16
	Other	1	0	4
Obama Transition	Regulations containing information collection requirements	58	51	65
	Regulations not containing information collection requirements	32	25	39

Administration	Category	Point Estimate (%)	Lower Bound of 95% Confidence Interval (%)	Upper Bound of 95% Confidence Interval (%)
	Regulations not subject to the Paperwork Reduction Act	0	0	4
	Regulations that did not discuss Paperwork Reduction Act	7	4	12
	Other	3	1	7

Data Table Figure 22: Agency Determinations under the Unfunded Mandates Reform Act of 1995 Regarding the Effect of Significant Final Regulations on Unfunded Mandates during Specified Transition and Nontransition Periods, 1996-2017

Administration	Category	Point Estimate (%)	Lower Bound of 95% Confidence Interval (%)	Upper Bound of 95% Confidence Interval (%)
Nontransition	Agency determined regulation may impose an unfunded mandate of \$100 million or more	1	0	5
	Agency determined regulation will not impose an unfunded mandate of \$100 million or more	57	49	64
	Agency determined regulation not subject to UMRA	5	2	9
	Regulation did not discuss UMRA	37	30	45
Clinton Transition	Agency determined regulation may impose an unfunded mandate of \$100 million or more	0	0	4
	Agency determined regulation will not impose an unfunded mandate of \$100 million or more	71	64	77
	Agency determined regulation not subject to UMRA	2	0	4
	Regulation did not discuss UMRA	28	22	34
Bush Transition	Agency determined regulation may impose an unfunded mandate of \$100 million or more	1	0	4

Appendix IV: Accessible Data

Administration	Category	Point Estimate (%)	Lower Bound of 95% Confidence Interval (%)	Upper Bound of 95% Confidence Interval (%)
	Agency determined regulation will not impose an unfunded mandate of \$100 million or more	71	64	77
	Agency determined regulation not subject to UMRA	1	0	4
	Regulation did not discuss UMRA	27	21	33
Obama Transition	Agency determined regulation may impose an unfunded mandate of \$100 million or more	0	0	4
	Agency determined regulation will not impose an unfunded mandate of \$100 million or more	61	54	68
	Agency determined regulation not subject to UMRA	1	0	4
	Regulation did not discuss UMRA	38	31	45

Data Table Figure 23: Extent to Which Agencies Indicated Benefits Justified Costs for a Subset of Final Economically Significant Regulations Published during Specified Transition and Nontransition Periods, 1996-2017

	1996-2000 Clinton				2000-2008 Bush				2008-2016 Obama			
	Nontransition		Transition		Nontransition		Transition		Nontransition		Transition	
Are benefits anticipated to exceed costs?	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent	n	Percent
Costs and benefits both discussed and agency indicated benefits justified costs (or used similar language)	8	36%	11	52%	20	63%	12	43%	43	55%	23	62%
Costs and benefits both discussed and agency did not indicate whether benefits justified costs	14	64%	10	48%	12	38%	16	57%	35	45%	14	38%

Data Table Figure 24: Extent to Which Agencies Estimated Net Costs or Benefits for a Subset of Final Economically Significant Regulations Published during Specified Transition and Nontransition Periods, 1996-2017

	1996-2000 Clinton				2000-2008 Bush				2008-2016 Obama			
	Nontransition		Transition		Nontransition		Transition		Nontransition		Transition	
	n	Percent	n	Percent	n	Percent	n	Percent	N	Percent	n	Percent
Did rule discuss net benefits?												
Costs and benefits both monetized and net costs or benefits calculated	3	33%	3	27%	9	56%	8	57%	23	79%	14	82%
Costs and benefits both monetized and no calculation of net costs or benefits	6	67%	8	73%	7	44%	6	43%	6	21%	3	18%

Data Table Figure 25: Estimated Percentage of Final Significant Regulations with Anticipated Economic Costs, Benefits, and Transfers during Specified Transition and Nontransition Periods, 1996-2017

	Administration	Category	Point Estimate (%)	Lower Bound of 95% Confidence Interval (%)	Upper Bound of 95% Confidence Interval (%)
Nontransition periods	All three administrations' non-transition periods combined	Primarily economic costs and benefits or both	44	37	52
		Primarily transfers	8	5	14
		Both economic costs or benefits and transfers	4	2	9
		No economic analysis	43	36	51
Transition periods	President Clinton's administration	Primarily economic costs and benefits or both	50	43	57
		Primarily transfers	7	4	12
		Both economic costs or benefits and transfers	0	0	4
		No economic analysis	43	36	50
	President Bush's administration	Primarily economic costs and benefits or both	36	29	43
		Primarily transfers	9	5	14

Appendix IV: Accessible Data

Administration	Category	Point Estimate (%)	Lower Bound of 95% Confidence Interval (%)	Upper Bound of 95% Confidence Interval (%)
President Obama's administration	Both economic costs or benefits and transfers	12	7	17
	No economic analysis	44	37	51
	Primarily economic costs and benefits or both	46	39	54
	Primarily transfers	1	0	4
	Both economic costs or benefits and transfers	7	4	12
	No economic analysis	45	38	52

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