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June 20, 2011

The Honorable Max Baucus
Chairman
The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Dave Camp
Chairman
The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of the Treasury, Office of the Secretary: Regulations
Governing Practice Before the Internal Revenue Service*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Office of the Secretary, entitled “Regulations Governing Practice Before the Internal Revenue Service” (RIN: 1545-BH01). We received the rule on June 3, 2011. It was published in the *Federal Register* as a final rule on June 3, 2011. 76 Fed. Reg. 32,286.

The final rule contains final regulations governing practice before the Internal Revenue Service (IRS). The regulations affect individuals who practice before the IRS and providers of continuing education programs. Specifically, the rule will apply to individuals who prepare all or substantially all of tax returns who are not attorneys or certified public accountants to apply to become a registered tax return preparer. To become a registered tax return preparer, an individual must pass a one-time competency exam, pass a suitability check, and obtain a preparer tax identification number (PTIN). The final rule also requires that registered tax return preparers complete a minimum of 15 hours of continuing education annually, and that continuing education providers obtain and renew continuing education provider numbers and pay any applicable fees.

Enclosed is our assessment of IRS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that IRS complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: LaNita Van Dyke
Chief, Publications and Regulations
Internal Revenue Service
Department of the Treasury

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
OFFICE OF THE SECRETARY
ENTITLED
"REGULATIONS GOVERNING PRACTICE BEFORE
THE INTERNAL REVENUE SERVICE"
(RIN: 1545-BH01)

(i) Cost-benefit analysis

IRS prepared a cost-benefit analysis in conjunction with the final rule. IRS determined that the primary benefit anticipated from the final rule is that it will improve the accuracy, completeness, and timeliness of tax returns prepared by tax return preparers. By requiring registered tax return preparers to successfully complete a government or professionally mandated competency examination and complete the specified continuing education credits annually, IRS believes the final rule will result in more competent and ethical tax return preparers who are well educated in the rules and subject matter, which will prevent costly errors, potentially saving taxpayers from unwanted problems and relieving the IRS from expending valuable examination and collection resources, and curtail the activities of noncompliant and unethical tax return preparers. Additionally, IRS believes the final rule will have the benefit of improving the accuracy, completeness, and timeliness of tax returns by helping the IRS identify tax return preparers and the tax returns and claims for refund that they prepare, which will aid the IRS's oversight of tax return preparers, and help IRS administer requirements intended to ensure that tax return preparers are competent, trained, and conform to rules of practice. Finally, the final rule will have the benefit of authorizing IRS to inquire into possible misconduct and institute disciplinary proceedings relating to registered tax return preparer misconduct under the provision of Circular 230.

The costs of the final rule are those associated with the competency examination, the PTIN, recordkeeping, continuing education, and fingerprinting. IRS stated that the costs associated with the competency examination for tax preparers or vendors are currently unknown, as are the costs for the government. IRS estimates that the aggregate annual PTIN registration costs for tax preparers will be from \$51 million to \$77 million, and that the aggregate annual PTIN registration costs to vendors will be from \$11 million to \$17 million. IRS stated that the \$50 annual fee is expected to recover the \$59,427,633 annual costs to the government for its administration of the PTIN registration program. IRS estimates that the recordkeeping costs for continuing education providers will be \$38,632,500 annually, and that the recordkeeping costs for registered tax return preparers will be \$9,880,000 annually. IRS stated that it did not have costs estimates for the costs of continuing education

for registered tax return preparers or continuing education providers, or for the fingerprinting costs for registered tax return preparers.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

IRS and Treasury determined that the final rule will impact a substantial number of small entities and the economic impact will be significant. The final rule affects individuals currently working as paid tax return preparers, individuals who want to become designated as a registered tax return preparer under the new oversight rules in Circular 230, and those small entities that employ or are owned by paid preparers. IRS estimates approximately 70 to 80 percent of the individuals subject to the final rule are paid preparers operating as or employed by small entities. To minimize the impact on small entities, IRS exempted individuals who prepare returns under the supervision of attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, or enrolled actuaries who sign the returns. IRS also eliminated a proposed requirement for continuing education providers to obtain continuing education program approval from the IRS for each continuing education program offered, which IRS believes will minimize the economic impact of these regulations on some small entities that offer continuing education programs.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

IRS determined that the final rule would result in expenditures by the private sector of \$100 million or more in a year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On August 23, 2010, Treasury and IRS published a notice of proposed rulemaking in the *Federal Register*. 75 Fed. Reg. 51,713. IRS received more than 50 written comments on the proposed rule. In the final rule, IRS summarized and responded to the relevant comments. 76 Fed. Reg. 32,286.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

IRS stated that the collection of information contained in the final rule was reviewed and approved by the Office of Management and Budget under control no. 1545-1726.

Statutory authorization for the rule

The final rule is authorized by 31 U.S.C. § 330, which authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department.

Executive Order No. 12,866 (Regulatory Planning and Review)

IRS determined that the final rule is economically significant under Executive Order 12,866, and the final rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

The final rule does not address the order.