



441 G St. N.W.
Washington, DC 20548

B-332517

September 15, 2020

The Honorable Charles E. Schumer
United States Senate

The Honorable Ron Wyden
United States Senate

Subject: *Request for a Congressional Review Act Opinion on IRS Notice 2020-65*

Dear Senators:

This letter responds to your request for our determination on whether Internal Revenue Service (IRS) Notice 2020-65, regarding the deferral of certain payroll tax obligations due to COVID-19, is a rule under the Congressional Review Act (CRA). IRS, *Relief with Respect to Employment Tax Deadlines Applicable to Employers Affected by the Ongoing Coronavirus (COVID-19) Disease 2019 Pandemic*, Notice 2020-65 (Aug. 28, 2020). As discussed further below, IRS has submitted the document as a non-major rule to GAO for purposes of CRA. That submission obviates the need for us to make that determination here.

Before a rule can take effect, CRA requires the agency promulgating the rule to submit to both Houses of Congress and GAO a report containing a copy of the rule, a concise general statement of the rule, including whether it is a major rule, and the proposed effective date of the rule.¹ 5 U.S.C. § 801(a)(1)(A). When an agency submits a document to our office under CRA, we consider that to be the agency's determination that the document is a rule under CRA. See B-330376, Nov. 30, 2018. When a rule is submitted to Congress, Congress has an opportunity to review the rule and pass a joint resolution of disapproval to void the rule. 5 U.S.C. § 802. Congress may use special procedures to pass such a resolution after submission within 60 session days in the Senate or 60 legislative days in the House of

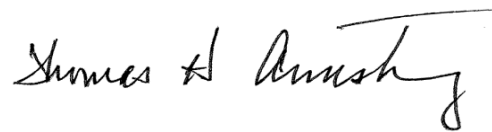
¹ Before most rules are finalized and published in the *Federal Register*, agencies are required to submit them to the Office of Information and Regulatory Affairs (OIRA). See Executive Order 12866. During its review, OIRA determines whether a rule is major or non-major under CRA. See 5 U.S.C. § 804(2). OIRA and IRS previously entered into a memorandum of agreement (MOA) regarding which rules would be subject to OIRA review, pursuant to which certain IRS guidance documents were exempt. We reported on the MOA in 2016. GAO, *Regulatory Guidance Processes: Treasury and OMB Need to Reevaluate Long-standing Exemptions of Tax Regulations and Guidance*, GAO-16-720 (Washington, D.C.: Sept. 6, 2016). Following our review, IRS and OIRA entered into a new MOA providing the general terms under which OIRA will review tax regulatory actions. Memorandum of Agreement, The Department of the Treasury and the Office of Management and Budget, Review of Tax Regulations Under Executive Order 12866, April 11, 2018.

Representatives after receipt of the rule.² 5 U.S.C. §§ 801, 802. On September 4, 2020, Representative John Larson of Connecticut introduced House Joint Resolution 94 which is a resolution of disapproval of the Notice.³ H. J. Res. 94, 116th Cong. (2020).

IRS submitted the Notice to our office on August 31, 2020, as a non-major rule. GAO, Federal Rules Database, Control Number 199398. While the Congressional Record does not yet reflect receipt of the Notice by either House of Congress as of September 14, 2020, IRS told us it had delivered the Notice on September 9, 2020. Telephone Conversation with Publications & Regulations Specialist, IRS (Sept. 9, 2020). Because IRS submitted the Notice to our office under CRA, we consider it to be a rule for purposes of CRA, which obviates the need for a GAO opinion on this matter.

If you have any questions, please contact Shirley A. Jones, Managing Associate General Counsel, at jonessa@gao.gov or 202-512-8156, or Shari Brewster, Assistant General Counsel, at brewsters@gao.gov or 202-512-6398.

Sincerely yours,

A handwritten signature in black ink that reads "Thomas H. Armstrong". The signature is written in a cursive style with a long horizontal line extending from the top of the "A".

Thomas H. Armstrong
General Counsel

² After the 60 session or legislative days have passed, Congress may still pass a resolution of disapproval, but the special procedures may not be used. The resolution must follow the normal legislative process.

³ The time limit on the use of special procedures is not tied to the introduction of H. J. Res. 94 but to receipt of the rule. The resolution may be used as the vehicle for disapproval, but it does not trigger the special procedures.