



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

B-336883

December 10, 2024

The Honorable Ron Wyden  
Chairman  
The Honorable Mike Crapo  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Jason Smith  
Chairman  
The Honorable Richard Neal  
Ranking Member  
Committee on Ways and Means  
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service: Election to Exclude Certain Unincorporated Organizations Owned by Applicable Entities from Application of the Rules on Partners and Partnerships*

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, Internal Revenue Service (IRS) entitled "Election to Exclude Certain Unincorporated Organizations Owned by Applicable Entities from Application of the Rules on Partners and Partnerships" (RIN: 1545-BR09). We received the rule on November 19, 2024. It was published in the *Federal Register* on November 20, 2024. 89 Fed. Reg. 91552. The stated effective date of the rule is January 19, 2025.

According to IRS, this rule sets forth final regulations that modify existing regulations to allow certain unincorporated organizations that are owned in whole or in part by applicable entities to be excluded from the application of partnership tax rules. IRS states that these regulations affect unincorporated organizations and their members, including tax-exempt organizations, the District of Columbia, state and local governments, Indian tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities. IRS further states that the rule also updates certain outdated language in the existing regulations.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was published in the *Federal Register* on November 20, 2024. 89 Fed. Reg. 91552. The Senate received the rule on November 19, 2024. 170 Cong. Rec. S6684 (daily ed. Nov. 20, 2024). The House of Representatives received the rule on November 25, 2024. 170 Cong. Rec. H6206 (daily ed. Nov. 29, 2024). The rule has a stated effective date of January 19, 2025. Therefore, the stated effective date is less than 60 days from the date of receipt by Congress.

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. 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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

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

Shirley A. Jones  
Managing Associate General Counsel  
Enclosure

cc: Regina Johnson  
Federal Register Liaison  
Internal Revenue Service

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE  
ENTITLED  
“ELECTION TO EXCLUDE CERTAIN UNINCORPORATED ORGANIZATIONS  
OWNED BY APPLICABLE ENTITIES FROM APPLICATION OF THE RULES  
ON PARTNERS AND PARTNERSHIPS”  
(RIN: 1545-BR09)

(i) Cost-benefit analysis

In its submission to us, the Department of the Treasury, Internal Revenue Service (IRS) indicated that it did not prepare an analysis of the costs and benefits of this rule. IRS stated in the rule that tax regulatory actions issued by IRS are not subject to section 6 of Executive Order No. 12866, and, therefore, a regulatory impact assessment is not required. 89 Fed. Reg. 91552, 91559 (Nov. 20, 2024).

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

IRS stated that the Secretary of the Treasury has certified that this rule will not have a significant economic impact on a substantial number of small entities. 89 Fed. Reg. 91552, 91560.

(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 this rule does not include a mandate that may result in expenditures by state, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. 89 Fed. Reg. 91552, 91560.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that

directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

IRS did not discuss the Act in this rule or in its submission to us.

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

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

On March 11, 2024, IRS published a proposed rule. 89 Fed. Reg. 17613. IRS stated that they received comments from various interested parties. 89 Fed. Reg. 91552, 91553. IRS responded to comments in the rule. 89 Fed. Reg. at 91553–59.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

IRS determined that this rule contains no new information collection requirements under the Act and described relevant existing information collection requirements. 89 Fed. Reg. 91552, 91559–60.

Statutory authorization for the rule

IRS promulgated this rule pursuant to sections 761(a), 6031(a), 6417(d), 6417(h), and 7805(a) of title 26, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

IRS stated that this rule is not subject to the Order’s regulatory review procedures because it is a tax regulatory action. 89 Fed. Reg. 91552, 91559.

Executive Order No. 13132 (Federalism)

IRS determined that this rule does not have federalism implications. 89 Fed. Reg. 91552, 91560.