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February 3, 2021

Chair
Ranking Member
Committee on Finance
United States Senate

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Republican Leader
Committee on Ways and Means
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service: Tax on Excess Tax-Exempt Organization Executive Compensation*

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 "Tax on Excess Tax-Exempt Organization Executive Compensation" (RIN: 1545-BO99). We received the rule on January 19, 2021. It was published in the *Federal Register* as final regulations on January 19, 2021. 86 Fed. Reg. 6196. The effective date of the rule is January 15, 2021.

According to IRS, the final rule sets forth final regulations under section 4960 of the Internal Revenue Code, 26 U.S.C. § 4960, which imposes an excise tax on remuneration in excess of $1,000,000 and any excess parachute payment paid by an applicable tax-exempt organization to any covered employee. IRS stated the final rule affects certain tax-exempt organizations and certain entities that are treated as related to those organizations.

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). The 60-day delay can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). IRS determined it had good cause to waive the delay because, while this final rule applies to taxable years beginning after December 31, 2021, taxpayers may choose to apply the final rule to taxable years beginning after December 31, 2017, and on or before December 31, 2021, provided the taxpayer applies the final rule in its entirety and in a consistent manner. Therefore, IRS determined applicable tax-exempt organizations and related organizations that wish to apply the final rule prior to the applicability date will need to know that the final rule is effective before incurring necessary costs to timely comply with the final rule.

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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Carrie E. Mudd
Director, Legal Processing Division
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,
INTERNAL REVENUE SERVICE
ENTITLED
"TAX ON EXCESS TAX-EXEMPT ORGANIZATION
EXECUTIVE COMPENSATION"
(RIN: 1545-BO99)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS) estimated the final rule would reduce uncertainty, lowering the effort required to infer which organizations, employees, and payments are subject to the excise tax, and the potential for conflict if entities and tax administrators interpret provisions differently. IRS stated it is plausible that the final rule restores substantial economic activity relative to regulatory alternatives, under which the excise tax would discourage highly-compensated employees of related non-applicable tax-exempt organizations (ATEOs) from providing services to a related ATEO without compensation from the ATEO and discourage relationships between ATEOs and non-ATEOs. IRS further stated its analysis suggests that the final rule will reduce compliance burden on affected entities by providing clarifications and, through the exceptions, increase services provided to ATEOs without compensation from the ATEO by a small but potentially economically significant amount, relative to regulatory alternatives.

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

IRS certified the final rule would not have a significant economic impact on a substantial number of small entities.

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

IRS determined the final rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

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

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

On June 11, 2020, IRS published a proposed rule. 85 Fed. Reg. 35746. IRS received comments on the proposed rule and responded to the comments in the final rule.

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

IRS determined the final rule contains information collection requirements (ICRs) subject to the Act. The ICR is entitled Form 4720 and is associated with Office of Management and Budget

(OMB) Control Number 1545-0047. IRS estimated the total aggregate burden for this control number is 52.450 million hours at cost of $1.497 billion.

Statutory authorization for the rule

IRS promulgated the final rule pursuant to sections 4960 and 7805 of title 26, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

IRS stated OMB determined the final rule was significant under section 1(c) of the Memorandum Agreement between the Department of the Treasury and OMB regarding review of tax regulations under the Order.

Executive Order No. 13132 (Federalism)

IRS determined the final rule does not have federalism implications that are not required by the statute and does not impose substantial direct compliance costs on state and local governments or preempt state law.