United States Government Accountability Office

Report to Ranking Member, Committee on Finance, U.S. Senate

February 2020

TAX CUTS AND JOBS ACT

Considerable Progress Made Implementing Business Provisions, but IRS Faces Administrative and Compliance Challenges

GAO-20-103

GAO Highlights

Highlights of GAO-20-103, a report to the Ranking Member of the Committee on Finance, U.S. Senate

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Considerable Progress Made Implementing Business Provisions, but IRS Faces Administrative and Compliance Challenges

Why GAO Did This Study

According to IRS, TCJA was the most sweeping tax law change in more than three decades, with 86 provisions that modified, added to, or repealed business and international taxes, such as the qualified business income deduction. IRS determined it would take significant effort to implement the law given the limited time-frame and magnitude of the provisions.

GAO was asked to review IRS's implementation of TCJA business and international provisions. Among other reporting objectives, this report examines IRS's (1) progress implementing the provisions, (2) processes to provide guidance, and (3) challenges for effectively administering these provisions.

To address these objectives, GAO analyzed IRS documentation on project management, compliance planning, and regulation development. Additionally, GAO interviewed IRS officials and tax practitioners.

What GAO Recommends

GAO is making five recommendations, including that IRS develop and document procedures for continued enhanced collaboration and convert tax return data to a more useable format for compliance purposes. IRS disagreed; however, GAO believes that these recommendations will benefit guidance development and tax administration.

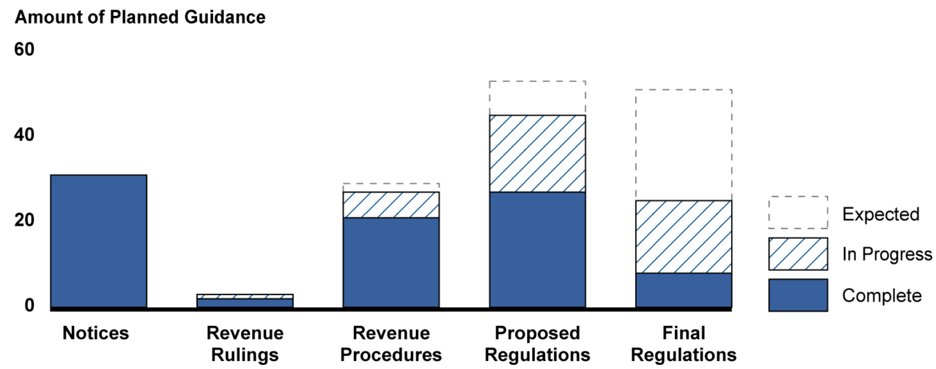
In prior work, GAO recommended that IRS measure which activities are producing desired hiring outcomes and take steps to reduce skill gaps among revenue agents. IRS agreed with these recommendations and, as of December 2019, plans to report on efforts to close skill gaps by December 2021.

View GAO-20-103. For more information, contact Jessica Lucas-Judy at (202) 512-9110 or lucasjudyj@gao.gov.

What GAO Found

The Internal Revenue Service (IRS) has made considerable progress issuing guidance to taxpayers for Public Law 115-97—commonly known as the Tax Cuts and Jobs Act of 2017 (TCJA)—but has additional work remaining to issue all planned guidance, as shown in the figure.

Internal Revenue Service Implementation of Planned Guidance for Public Law 115-97, Commonly Known as the Tax Cuts and Jobs Act of 2017



GAO analysis of Internal Revenue Service documentation. | GAO-20-103

Notes: IRS refers to regulations and other information that it considers binding on the IRS—including the types in the figure above—as guidance. This figure displays completed and planned guidance at the end of fiscal year 2019.

To improve efficiency of TCJA guidance development, IRS internally collaborated earlier and more frequently than during more routine tax law changes. IRS officials said the benefits of this enhanced collaboration included faster decision-making on time-sensitive guidance, including regulations. IRS officials agreed enhanced collaboration had value but as of December 2019 had not identified the parameters for when this collaborative approach would be warranted.

IRS may face challenges ensuring compliance with certain TCJA provisions because third-party information reporting is not always available. GAO's past work has found that one of the important factors contributing to the tax gap is the extent to which information is reported to IRS by third parties. Without third-party reporting, IRS will have to rely on resource-intensive audits to enforce certain TCJA provisions, which could be challenging given recent trends of declining audit rates and enforcement staff. GAO has recommendations from March 2019 for IRS to take actions to mitigate hiring risks and reduce skill gaps.

IRS was also unable to update all information technology systems prior to the start of the 2019 tax season due to the magnitude of TCJA changes. As a result, IRS was not able to capture certain tax return information in a format that can be easily analyzed to help with compliance planning activities. One IRS division took steps to convert certain tax return data to a more useable format, but efforts to identify other viable opportunities have not been taken. Without appropriate data for analyses, IRS could face challenges enforcing certain TCJA provisions.

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Abbreviations

BOD	business operating division
Chief Counsel	Office of Chief Counsel
e-filed	electronically filed
EIPP	Enterprise Integrated Program Plan
E.O.	Executive Order
IRM	*Internal Revenue Manual*
IRS	Internal Revenue Service
IT	information technology
LB&I	Large Business and International
MOA	Memorandum of Agreement
OIRA	Office of Information and Regulatory Affairs
OMB	Office of Management and Budget
OTP	Office of Tax Policy
QBI	qualified business income
PDF	Portable Document Format
SB/SE	Small Business/Self-Employed
SSTB	specified service trade or business
TCJA	Tax Cuts and Jobs Act of 2017
TIGTA	Treasury Inspector General for Tax Administration
Treasury	Department of the Treasury
TRIO	Tax Reform Implementation Office
XML	Extensible Markup Language

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

February 25, 2020

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

Dear Senator Wyden:

According to the Internal Revenue Service (IRS), Public Law 115-97—commonly known as the Tax Cuts and Jobs Act of 2017 (TCJA)—was the most sweeping tax law change in more than 3 decades.[1] The law created 119 provisions that modified, added, or repealed sections of the U. S. tax code, 86 of which relate to business and international taxes.[2] Among its many provisions, the law reduced the top corporate tax rate from 35 percent to 21 percent, created potential tax benefits for taxpayers invested in designated qualified opportunity funds, and significantly changed the international tax regime.

Given the magnitude of the changes in TCJA, IRS determined that it would take significant effort to implement the law and ensure that taxpayers have the necessary guidance to fulfill their obligations. While IRS has to make changes to its products every year, many of the changes needed to implement TCJA were time sensitive and extensive. IRS determined it would need to revise or create nearly 500 tax forms, instructions, and publications to help taxpayers meet their new tax filing obligations. Also related to TCJA implementation, IRS officials said they would need to reprogram information technology (IT) software systems, hire more than 1,000 new employees, and train the IRS workforce.

You asked us to review IRS's implementation of the business and international provisions of TCJA. The objectives of this report are to (1) examine IRS's processes to provide guidance to taxpayers on these provisions, (2) assess the economic analyses the Department of the

[1]David J. Kautter, Acting Commissioner of the Internal Revenue Service, *The 2018 Tax Filing Season and Future IRS Challenges,* testimony before the Senate Finance Committee, 115th Cong., 2nd sess., April 12, 2018; To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017) (hereafter, TCJA).

[2]For purposes of implementation, IRS counted each section of TCJA as a single provision.

Treasury (Treasury) conducted as part of the regulatory development process, (3) evaluate IRS monitoring of implementation of these provisions and describe implementation status, and (4) examine challenges that could affect IRS's ability to effectively administer these provisions.

To address our first objective, we analyzed IRS documentation, such as prioritization records, guidance development records, and actual regulations and other guidance documents (e.g., notices and news releases). We also interviewed IRS officials involved in the guidance development efforts. We used criteria from our key practices for federal agencies to enhance and sustain collaboration efforts and the *Standards for Internal Control in the Federal Government* to examine IRS's strategy for developing guidance and providing information to taxpayers.[3]

To address our second objective, we analyzed IRS, Treasury, and Office of Management and Budget (OMB) documentation detailing the regulatory development and decision-making processes. We also interviewed officials from the IRS's Tax Reform Implementation Office (TRIO), IRS's Office of Chief Counsel (Chief Counsel), Treasury's Office of Tax Policy, and OMB's Office of Information and Regulatory Affairs (OIRA). Specifically, to identify the factors Treasury and IRS considered when analyzing different regulatory options and deciding which regulatory options to select, we analyzed TCJA draft and published regulations and underlying documentation to identify the factors Treasury and IRS considered when analyzing trade-offs presented by different regulatory options. We used criteria from OMB regulatory guidance for executive branch agencies to examine Treasury's development and analyses of regulatory alternatives. This includes an April 2018 Memorandum of Agreement between Treasury and OMB, Executive Order 12866, and OMB Circular A-4.[4]

[3]GAO, *Standards for Internal Control in the Federal Government,* GAO-14-704G (Washington, D.C.: Sept. 10, 2014) and *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms,* GAO-12-1022 (Washington, D.C.: Sept. 27, 2012).

[4]Office of Management and Budget, *Memorandum of Agreement, Review of Tax Regulations under Executive Order 12866*, (Apr. 11, 2018); *Circular A-4: Regulatory Analysis* (Washington, D.C.: Sept. 17, 2003); and Exec. Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 51,735 (Oct. 4, 1993).

To address our third objective, we analyzed IRS project management documentation, such as IRS's Enterprise Integrated Project Plan (EIPP) for TCJA implementation and publicly issued guidance. We also interviewed IRS officials responsible for implementing business and international TCJA provisions, including IRS's TRIO, Large Business & International (LB&I) Division, Small-Business/Self-Employed (SB/SE) Division, and Information Technology organization. We used criteria from *Standards for Internal Control in the Federal Government* to evaluate IRS's project management activities.

To address our fourth objective, we analyzed TCJA and IRS documentation, including SB/SE compliance plans. Further, we interviewed officials from TRIO, LB&I, SB/SE, Information Technology organization, and Chief Counsel. We also interviewed and subsequently analyzed statements from randomly selected tax practitioners who submitted public comments on IRS's proposed regulations for the qualified business income (QBI) deduction, opportunity zones, and the repatriation tax—provisions we analyzed in further depth (see discussion below)—to identify outside perspectives on challenges for IRS administration and enforcement.

We examined these challenges and risks and subsequently followed up with IRS to understand the extent to which IRS was aware of and planning mitigating actions to address them. We used IRS's strategic plan and *Standards for Internal Control in the Federal Government* as criteria for identifying any gaps between mitigation efforts and overall agency-wide goals and priorities.[5]

As part of our work, we further analyzed three provisions—the QBI deduction, opportunity zones, and the repatriation tax—to gain specific insights into the decision-making process for prioritizing and developing guidance and regulations and factors that may affect IRS' ability to effectively administer these provisions.[6] We selected these three

[5]Internal Revenue Service, *IRS FY2018-2022 Strategic Plan*, Publication 3744 (Rev. 4-2018) and GAO-14-704G.

[6]With regard to the QBI deduction, our report concerns the deduction found at 26 U.S.C. § 199A(a), and not the deduction found at 26 U.S.C. § 199A(g). The latter deduction was not originally included in the TCJA. Rather, it was enacted in the Consolidated Appropriations Act, 2018, and it relates to a deduction for income attributable to domestic production activities of specified agricultural or horticultural cooperatives. Pub. L. No. 115-141, div. T, §101, 132 Stat. 348, 1151 (Mar. 23, 2018).

provisions based on a number of factors, including IRS designating them as higher priority for implementation, and IRS, the National Taxpayer Advocate, and other knowledgeable stakeholders identifying them as especially challenging or complex to implement, administer, or enforce. Further, these three selections ensured we were able to examine at least one provision impacting domestic taxpayers managed by SB/SE division and at least one provision impacting foreign or multinational taxpayers managed by LB&I. For a more detailed description of our objectives, scope, and methodology, see appendix I.

We conducted this performance audit from August 2018 to February 2020 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

Tax Cuts and Jobs Act of 2017

Of TCJA's 119 provisions, 86 relate to business and international tax law, ranging in scope from tax treatment of commuter benefits to significant modifications to international aspects of U.S. income tax.[7] See table 1 for select examples of tax law changes resulting from TCJA.

[7]See appendix II for a list and implementation status of the 86 business and international provisions. For a complete list of the changes within TCJA and comparison to tax law prior to TCJA, see Congressional Research Service, *2017 Tax Revision (P.L. 115-97): Comparison to 2017 Tax Law*, 7-5700, (Feb. 6, 2018).

Table 1: Select Changes to Tax Law from Tax Cuts and Jobs Act of 2017 (TCJA)

Section number	Section Name	Internal Revenue Code Section(s) Affected	Tax Law pre-TCJA	Change under TCJA
Section 11011	Deduction for qualified business income[a]	§ 199A	No comparison, new provision.	Owners of sole proprietorships, partnerships, S corporations and some trusts and estates may be eligible to deduct up to 20 percent of their qualified business income, plus 20 percent of the aggregate amount of qualified real estate investment trust dividends and qualified publicly traded partnership income.
Section 13001	21 percent corporate tax rate	§ 11(b)	Graduated corporate tax rate between 15 and 35 percent.	Change in corporate tax rate to 21 percent.
Section 13301	Limitation on deduction for interest	§ 163(j)	Net interest deduction is limited to 50 percent of adjusted taxable income for firms with debt-equity ratio above 1.5. Interest above the limit can be carried forward indefinitely.	The change limits deductions for business interest incurred by certain businesses. The deduction for business interest expense is limited to business interest income plus 30 percent of the business's adjusted taxable income and floor-plan financing interest.
Section 13823	Opportunity zones	§§ 1400Z–1, 1400Z–2	No comparison, new provision.	Provides tax benefits for taxpayers invested in certified qualified opportunity funds. Allows investors to defer tax payments on taxable gains that are reinvested in certified qualified opportunity funds. This provision additionally eliminates taxable gains on investments in qualified opportunity funds so long as the investment is held for at least 10 years and originated with a deferred gain.
Section 14103	Treatment of deferred foreign income upon transition to participation exemption system of taxation (Repatriation tax)	§ 965	Taxpayers taxed on all income earned either in the United States or abroad. Foreign earnings of foreign subsidiaries are generally not taxed until distributed as a dividend to a U. S. corporation.	One-time mandatory tax on untaxed foreign earnings of foreign subsidiaries of U.S. companies generated post-1986. Allows taxpayers to pay in installments over 8 years.

Section number	Section Name	Internal Revenue Code Section(s) Affected	Tax Law pre-TCJA	Change under TCJA
Section 14201	Current year inclusion of global intangible low-taxed income by United States shareholders	§§ 951A, 960(d)	U. S. persons are generally not subject to U. S. tax on foreign income earned by foreign corporations until income is distributed to that person. Certain income (Subpart F) is taxed to the U. S. shareholder.	A U.S. shareholder of any controlled foreign corporation must include his or her global intangible low-taxed income in a tax year's gross income in a manner similar to how they include Subpart F income. Global intangible low-taxed income is the remaining income of foreign affiliates of U.S. companies after subtraction of a deemed return on those companies' tangible assets.
Section 14401	Base erosion and anti-abuse tax	§§ 59A, 6038A	No comparison, new provision.	Imposes minimum tax on corporations with average annual gross receipts of at least $500 million over a 3-year period equal to base erosion minimum tax amount, in addition to taxpayer's regular tax liability, when applicable.

Source: Internal Revenue Service (IRS) documentation and Pub. L. No. 115-97. | GAO-20-103

Note: Pubic Law 115-97 is commonly known as the Tax Cuts and Jobs Act of 2017. See Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

[a]The deduction found at 26 U.S. C. § 199A(g) was not considered in this report.

While Congress amends the tax code routinely, the time constraints and magnitude of changes within TCJA are less common. According to IRS officials, the last time IRS implemented major tax law changes was in 1986.[8] For TCJA, IRS had a relatively short time frame to implement because the law included many time-sensitive provisions that were either retroactively effective, or immediately effective upon the law's enactment.

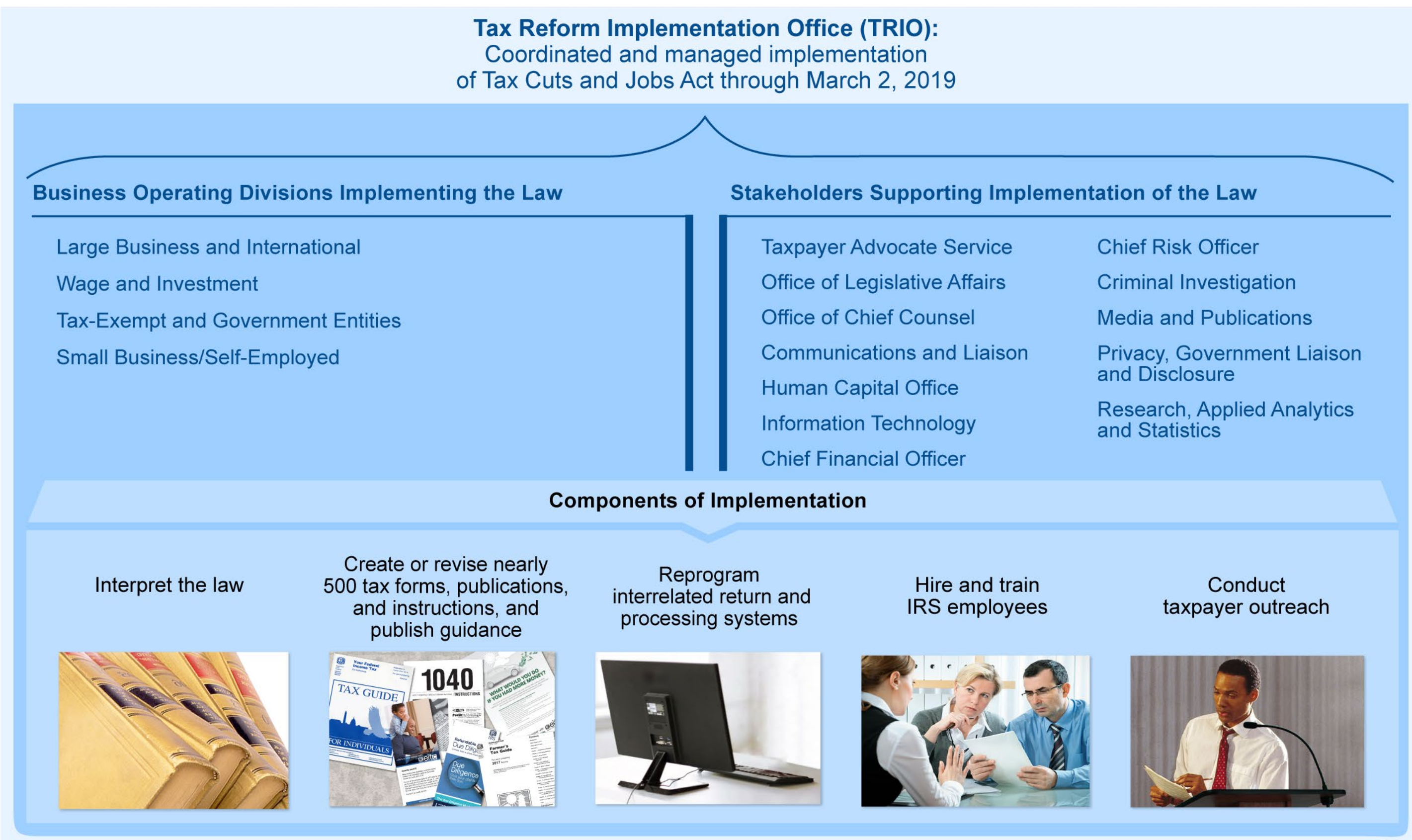
IRS Project Management for TCJA

To implement TCJA, IRS established working groups to provide project management oversight, coordinate the implementation of TCJA provisions across IRS, and identify priorities, challenges, and risks of the new tax law changes. For instance, TRIO was established in January

[8]Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (Oct. 22, 1986).

2018 as a short-term centralized authority to prioritize, oversee, and coordinate implementation of TCJA, as shown in figure 1.

Figure 1: IRS's Implementation of the Tax Cuts and Jobs Act



Source: GAO analysis of Internal Revenue Service (IRS) information. | GAO-20-103

Note: Pubic Law 115-97 is commonly known as the Tax Cuts and Jobs Act of 2017. See Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

TRIO's oversight model was based on the working groups convened during IRS's implementation of Patient Protection and Affordable Care Act.[9] Made up of officials with expertise across IRS, including IRS's business operating divisions (BOD)—the offices responsible for implementation, oversight, and compliance of tax laws—TRIO was established to temporarily oversee TCJA implementation through the 2019 filing season.[10] TRIO's objectives for the 2019 filing season included ensuring that taxpayers understood their tax obligations and that IRS could process tax returns, payments, and refunds. In March 2019, TRIO dissolved and transitioned oversight and operations to the BODs.

In addition to the working groups that were established to implement TCJA, IRS also relied on its usual practices for implementation of tax law changes, including developing guidance, training employees, and updating technology systems:

Determining appropriate guidance for release. IRS interprets the law and develops guidance using a variety of documents and services to communicate its interpretation to help taxpayers understand their tax obligations.[11]

- IRS guidance includes Treasury Decisions (the formal name for final or temporary tax regulations), which are considered the legally binding interpretation of the statute and IRS's official position on federal tax

[9]Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010) as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152. 124 Stat. 1029 (Mar. 30, 2010). For more information, see GAO, *Patient Protection and Affordable Care Act: IRS Managing Implementation Risks, but Its Approach Could Be Refined,* GAO-12-690 (Washington, D.C.: June 13, 2012).

[10]IRS BODs implement and administer the relevant provisions to the four taxpaying groups—Wage and Investment, Small Business/Self-Employed, Large Business and International, and Tax Exempt/Government Entities.

[11]For more information on the types of IRS guidance and the guidance development process see 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).

law.[12] Treasury generally has 18 months after tax law changes to issue final regulations for them to be retroactively effective to the date of enactment, though there is an exception to prevent abuse.[13] In some cases, Treasury will issue temporary regulations—to provide immediate guidance—prior to issuing final tax regulations.[14] Other forms of guidance include proposed regulations—a step in the regulation development process—revenue rulings, revenue procedures, and notices, among other documents, to provide additional official guidance to taxpayers.[15]

- IRS also provides taxpayers with a range of other information sources, including frequently asked questions, webinars, YouTube videos, and news releases.

Developing guidance. IRS's Chief Counsel, in coordination with Treasury's Office of Tax Policy, drafts tax regulations and also works with IRS BODs and the public. Draft tax regulations are circulated throughout IRS and Treasury for review and approval before being published as a proposed tax regulation in the *Federal Register*. The public is given the opportunity to provide comments, which are analyzed and incorporated as appropriate into another draft of the regulation. The draft tax regulation

[12]By referring to regulations as guidance, and by treating certain nonregulatory guidance (e.g., notices and revenue rulings) as binding on the agency, IRS practice differs from other federal agencies and OMB which generally make a distinction between regulations and guidance, and view guidance as non-binding. For the remainder of this report, we use IRS's definition (regulations plus the four other guidance types published in the Internal Revenue Bulletin) when referring to IRS guidance. IRS's practice is to submit certain items published in the Internal Revenue Bulletin to us pursuant to the Congressional Review Act. 5 U.S.C. § 801(a)(1). See GAO-15-368 for more information on how federal agencies generally define guidance.

[13]See 26 U.S.C. §7805(b)(2), which allows for the retroactive application of regulations issued within 18 months of the date of the enactment of the statutory provision to which the regulations relate. Furthermore, 26 U.S.C. § 7805(b)(3) states that the Secretary of the Treasury may provide that any regulation may take effect or apply retroactively to prevent abuse. Treasury may also issue final regulations that are retroactive to the date of proposed regulations. 26 U.S.C. § 7805(b)(1).

[14]Temporary regulations expire after 3 years during which time IRS can issue final regulations after considering any public comments. 26 U.S.C. § 7805(e).

[15]IRS determines the type of guidance to issue for a given circumstance. For instance, IRS issues regulations to provide guidance on new legislation or to address issues relating to existing Internal Revenue Code sections, revenue rulings to provide IRS's conclusion on how the law relates to a specific set of facts, and revenue procedures to provide filing or other instructions relating to an IRS position.

is again circulated through IRS and Treasury for review and approval, before being published as a final tax regulation in the *Federal Register*.

In some instances, once the draft proposed and final regulations have gone through the IRS and Treasury approval process, regulations may be subject to review by OIRA.[16] OIRA reviews tax regulations that may create serious inconsistencies or otherwise interfere with another agency's actions, raise novel legal or policy issues, or have an annual non-revenue effect on the economy of $100 million or more measured against a no-action baseline.[17]

Conducting stakeholder outreach. In addition to the development of regulations, IRS works with the public to gather feedback, educate taxpayers on published guidance, and inform it of upcoming efforts to provide additional guidance on key areas where IRS and stakeholders require additional clarity.

Developing internal policies and procedures. IRS updates its *Internal Revenue Manual* (IRM)—the official compilation of instructions to staff on the administration and operation of the IRS—with procedures that inform staff of the steps they should take to correctly complete work and administer new tax law changes.

Training employees. IRS trains employees to understand revisions in the tax code and ensure they have the tools necessary to manage key priorities such as using data and analysis to improve customer service and enforcement efforts.

[16]OIRA is comprised of multiple subject matter branches and is tasked with reviewing significant regulations from the Executive Branch prior to publication under Executive Order 12866.

[17]The current process reflects a change in practice. Prior to April 2018, most tax regulations were routinely deemed not to meet the requirements to trigger OIRA review. However, as agreed upon in an April 2018 *Memorandum of Agreement, Review of Tax Regulations under Executive Order 12866* between OMB and Treasury, these practices were revisited and adjusted to reflect a new understanding of the circumstances where OIRA review is appropriate for tax-related regulations. According to the Memorandum of Agreement*,* OIRA has 45 calendar days to review tax regulations, however, for TCJA regulations OIRA agreed to consider an expedited review of 10 business days. The Memorandum of Agreement and OIRA review is consistent with our prior recommendation for OMB and Treasury to review the exemption of certain tax regulations from OIRA review. For more information, see GAO-16-720.

Modifying Information Technology (IT) Systems. IRS's Information Technology organization updates the application programs of the tax return intake systems to allow IRS to accept and process tax returns. Generally, IRS captures data from electronically filed (e-filed) tax returns through its Modernized e-File application in a format that can be used for compliance and enforcement purposes.

IRS Prioritized TCJA Implementation Activities and Used Collaborative Practices to Develop Guidance, but Has Not Decided Whether to Continue Enhanced Collaboration

Given the magnitude and short timeline for TCJA implementation, IRS reassessed priorities to implement the law. While some IRS officials said they were largely able to balance TCJA implementation with their other work, other officials from Chief Counsel told us they decreased some field services to taxpayers, and scaled back non-TCJA guidance development. Additionally as a result of TCJA, IRS temporarily postponed some planned work, including some IT work and publication of previously planned taxpayer guidance on health savings accounts, the work opportunity tax credit, and other areas.

To meet statutory requirements and best meet taxpayer needs, IRS prioritized 33 TCJA provisions for initial implementation, including 12 business and international provisions as the highest priorities, as shown in table 2. IRS officials said their highest priorities were to implement retroactive provisions because they affected the tax year beginning prior to January 1, 2018—and entirely new provisions. According to IRS planning documentation, in making these decisions, the agency considered the anticipated amount of public scrutiny, as well as the necessary amount of internal collaboration, external stakeholder coordination, and the extent of IT system modifications required to implement.

Table 2: IRS's Highest Priority Business and International Provisions of Tax Cuts and Jobs Act of 2017

Section Number	Section Name
Section 11011	Deduction for Qualified Business Income (QBI)
Section 13001	21 percent Corporate Tax Rate
Section 13301	Limitation on Deduction for Interest
Section 13302	Modification of Net Operating Loss Deduction
Section 13306	Denial of Deduction for Certain Fines, Penalties, and Other Amounts
Section 13403	Employer Credit for Paid Family and Medical Leave
Section 13501	Treatment of Gain or Loss of Foreign Persons from Sale or Exchange of Interests in Partnerships Engaged in Trade or Business Within the United States
Section 13823	Opportunity Zones
Section 14103	Treatment of Deferred Foreign Income Upon Transition to Participation Exemption System of Taxation (Repatriation Tax)
Section 14201	Current Year Inclusion of Global Intangible Low-Taxed Income by United States Shareholders
Section 14202	Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income
Section 14401	Base Erosion and Anti-Abuse Tax

Source: Internal Revenue Service (IRS) documentation. | GAO-20-103

Note: Pubic Law 115-97 is commonly known as the Tax Cuts and Jobs Act of 2017. See Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

IRS Attempted to Address Significant Questions in Early Guidance, but Unresolved Questions Created Challenges for Taxpayers

To help taxpayers understand the new tax law and meet their tax obligations, IRS released various types of guidance. Officials told us they aimed to address the most significant questions through early guidance, before answering secondary questions in subsequent guidance. IRS developed comparisons of TCJA with the previous law to help taxpayers understand changes by topic and conducted public information campaigns targeting specific audiences, such as small businesses, to help taxpayers identify the right information and resources to meet their tax obligations.

According to IRS officials, one challenge with taxpayers needing to rely on guidance when guidance has not been finalized is that unresolved questions can create uncertainty and guesswork for some taxpayers. While some tax practitioners we spoke with said the release of shorter and earlier information was helpful to provide insight into initial IRS positions on provisions that required immediate instruction, other tax practitioners said that the absence of complete information meant that taxpayers had to file their taxes without certainty.

For instance, IRS worked to provide early information to taxpayers on the immediately effective repatriation tax. Repatriation tax payments were due in 2018; however, under the law, taxpayers had the option to pay in installments over 8 years.[18] IRS did not have time to release comprehensive guidance in advance. To provide some early information to taxpayers, IRS instead released three notices (in January, February, and April 2018) and a revenue procedure (February 2018) to help taxpayers understand topics such as whether they were subject to the tax and their tax liability.[19]

In May 2019, the Treasury Inspector General for Tax Administration (TIGTA) reported that the short implementation time frame did not leave taxpayers sufficient time to understand the guidance and comply with their resulting tax liability.[20] TIGTA reported that while IRS made a reasonable effort to inform taxpayers of the requirements under the repatriation tax, some taxpayers overpaid their first-year repatriation tax installment without the knowledge that IRS would not be refunding excess remittances of installments.[21] The initial repatriation tax information issued mid-filing season instructed taxpayers to make two separate payments—one for their income tax liability and one for their repatriation tax liability, language that was later clarified. Subsequently, IRS announced that excess payments would be applied to the unpaid portion of the taxpayer's liability and that IRS was legally precluded from issuing a refund of any excess remittances.

TIGTA reported that for the 2017 tax year, 115 taxpayers filed repatriation tax refund claims—amounting to $2.8 billion—which, according to TIGTA, indicated that these were unintended overpayments. TIGTA

[18]See 26 U. S. C. § 965(h).

[19]See Notice 2018-07, *Guidance Under Section 965,* Internal Revenue Bulletin No. 2018-4, (Jan. 22, 2018); Notice 2018-13, *Additional Guidance Under Section 965*, Internal Revenue Bulletin No. 2018-6, (Feb. 5, 2018); Notice 2018-26, *Additional Guidance Under Section 965*, Internal Revenue Bulletin No. 2018-16, (Apr. 16, 2018); and Rev. Proc. 2018-17, *Rev. Proc. 2018-17*, Internal Revenue Bulletin No. 2018-9, (Feb. 26, 2018). Final regulations for the repatriation tax were issued in February 2019. See 84 Fed. Reg. 1838 (Feb. 5, 2019).

[20]Treasury Inspector General for Tax Administration, *Implementation of the Tax Cuts and Jobs Act Deemed Repatriation Tax Presented Significant Challenges* (Washington, D.C.: May 22, 2019).

[21]IRS does not provide refunds on excess remittance of any existing tax liability unless the payment exceeds the entire liability. See 26 U.S.C. §§ 6402, 6403.

recommended that IRS take steps to inform taxpayers when the next payment is due and how their excess payment was applied to their repatriation tax balance. According to TIGTA, IRS agreed to these recommendations and is taking steps to implement them.

Enhanced Collaboration Was Critical for TCJA Implementation, but IRS Has Not Documented These Practices

Because of the magnitude of the changes and the immediate effective dates of many TCJA provisions, Chief Counsel collaborated earlier and more frequently with IRS BODs to implement TCJA. IRS officials said these enhanced collaborative efforts were best practices and critical to timely TCJA guidance development. Although there are some guidelines in the IRM for intra-agency coordination, IRS has not identified instances when this enhanced collaboration would benefit guidance development or taken steps to document these parameters to assure consistency and accountability.

Based on our analysis, we found that IRS officials leveraged several key practices for implementing collaborative mechanisms to support TCJA implementation, including identifying leadership roles and responsibilities, identifying relevant participants, and using resources to facilitate collaboration, which we identified in prior work.[22] For instance, IRS formed TRIO to manage TCJA implementation and centralize accountability and decision-making. Additionally, Chief Counsel's earlier and more frequent work with the BODs allowed for participants with appropriate skills and expertise to contribute to guidance development and highlight potential enforcement concerns. This collaboration included weekly, and in some instances daily, meetings for participants to provide implementation status updates. Further, IRS developed joint project documents and leveraged collaborative technologies to track and manage TCJA implementation and facilitate sharing across the agency.

IRS officials stated that there were several benefits to this enhanced collaborative approach, including:

- more efficient and effective development of comprehensive regulations, for instance guidance for the QBI provision;

[22]The key practices of outcomes and accountability, bridging organizational cultures, leadership, clarity of roles and responsibilities, working with relevant participants, and use of technology resources were discussed consistently in our interviews with IRS. See GAO-12-1022 for a full list of key practices for implementing interagency collaborative mechanisms.

- faster decision-making on time-sensitive regulations;
- earlier identification of tax administration and enforcement concerns;
- mitigation of potential enforcement challenges, such as narrowing the definition of specified trades and businesses on the QBI deduction; and
- ability to begin compliance planning earlier.

Our prior work on interagency collaboration mechanisms and the *Standards for Internal Control in the Federal Government* identify areas for agencies to improve and sustain collaboration. For instance, we identified that frequent communication can help facilitate working across agency boundaries and that articulating agreement in formal documents that are regularly updated and monitored can strengthen commitment to working collaboratively.[23] In addition, federal internal control standards state that agencies should ensure stakeholders from different parts of an organization communicate to help the agency fulfill its mission.[24]

Chief Counsel officials acknowledged the value of this enhanced collaboration but as of December 2019 had not identified or documented criteria for when this collaborative approach would benefit guidance development and help achieve agency goals. Chief Counsel officials said that the guidelines as written provided flexibility in determining when to collaborate early with other offices during TCJA implementation. In addition, officials said that the value of collaboration depends on the scope and complexity of a tax law change and the decision to use earlier and more frequent collaboration would need to consider tradeoffs and other considerations such as other IRS priorities and the effects of pulling employees away from other activities.

However, IRS officials described the enhanced collaboration used throughout TCJA implementation as unprecedented and key to successful implementation, indicating that identifying the situations when this earlier and more frequent collaboration would make sense and

[23]While we did not conduct a comprehensive analysis of IRS's collaboration mechanisms during our audit, we found that IRS relied on some of these key practices. We found documenting agreement to be relevant criteria for IRS to practice in the future. For more information, see GAO-12-1022.

[24]GAO-14-704G.

updating relevant documentation to reflect this could benefit IRS guidance development. Documenting the parameters and procedures for enhanced collaboration practices would better position IRS to be prepared to use enhanced collaboration during implementation of complex or time-sensitive changes to the tax code. For example, enhanced collaboration may help to identify and mitigate potential administrative effects of regulatory design decisions, potentially helping IRS identify more cost-effective alternatives within the limits of available resources. These potential benefits are also supported by our past work on regulatory design during the rulemaking process. Specifically, we found that it is important for agencies to consider enforcement and compliance issues during regulation development because different design choices have implications for future enforcement and compliance efforts.[25]

Treasury's Economic Analyses Omit Key Considerations of Distributional Effects of Tax Regulations

While developing regulations to help implement and administer TCJA provisions, Treasury and IRS made discretionary decisions in the regulatory development process that have meaningful effects on taxpayers' tax liability and government revenue collection that were not included in their analysis. Changes to tax liability have distributional consequences, as taxes transfer money from taxpayers to the government, but do not directly affect the total resources available to the country. These distributional effects are one element that should be recognized during the regulatory development process, along with costs and benefits of the regulations. While we found that, among the provisions we looked at more deeply, Treasury's analyses did recognize some costs and benefits related to factors such as administrability, compliance costs, and economic distortions, Treasury's analyses did not generally assess the distributional effects, including effects on tax revenue collection, the regulations had as a result of changes in tax liability.[26]

As part of the regulatory development process, Treasury and IRS must adhere to Executive Order (E. O.) 12866, which establishes standards for

[25]GAO, *Federal Regulations: Key Considerations for Agency Design and Enforcement Decisions,* GAO-18-22 (Washington, D.C.: Oct. 19, 2017).

[26]We have previously reported on key elements of regulatory analyses in rulemaking across the federal government. For more information, see GAO, *Federal Rulemaking: Agencies Included Key Elements of Cost-Benefit Analysis, but Explanations of Regulations' Significance Could Be More Transparent [Reissued on September 12, 2014],* GAO-14-714 (Washington, D.C.: Sept. 11, 2014).

regulatory planning and review. E.O. 12866 instructs agencies to select regulatory approaches that maximize net benefits, including economic, distributive, and equity effects, unless a statute requires another regulatory approach.[27] Any regulation that is determined to be significant must be submitted to OIRA for review, along with an analysis of the costs and benefits of that regulation.[28]

However, until 2018, Treasury's and IRS's tax regulations were not regularly subjected to analysis and review under E.O. 12866. In many cases, tax regulations were deemed not significant under E.O. 12866, and as a result, Treasury and IRS did not perform regulatory analyses and they were not reviewed by OIRA.[29] Some tax regulations were also exempt from OIRA review, which was otherwise required under E.O. 12866 based on an agreement between OMB and Treasury. However, E.O. 13789, signed in 2017, instructed the Secretary of the Treasury to reconsider the scope of that exemption, and in April 2018, Treasury and

[27]Exec. Order No. 12866, § 1(a) (Sept. 30, 1993).

[28]Under Executive Order No. 12866, a rule is significant if it meets one of four criteria: (1) has 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; (2) creates a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order. E.O. 12866 directs agencies issuing "significant" rules to analyze of the effects of the regulations including assessing its potential costs and benefits. For "economically significant" rules—a subset of "significant" rules—agencies are required to perform additional analyses including assessing the costs and benefits of feasible alternatives and explain why the planned regulatory action is preferable to alternatives.

[29]We previously reported that between 2013 and 2015, only one of more than 200 tax regulations was determined to be significant. In contrast, more than 20 TCJA regulations related to business and international provisions were deemed significant between July 2018 and September 2019. For more information, see GAO-16-720.

OMB signed a Memorandum of Agreement (MOA) subjecting certain tax regulations to OIRA review.[30]

In accordance with the MOA and the requirements in E.O. 12866, for regulations deemed significant, Treasury is responsible for conducting and producing an analysis of the impact of the regulations, including an assessment of costs and benefits. Tax regulations with an anticipated annual non-revenue effect of $100 million or more are deemed economically significant, and are subjected to this additional analysis. Under the MOA, Treasury was allowed a 12-month transition period to obtain reasonably sufficient resources to meet the additional requirements for economically significant regulations. The transition period expired in April 2019, and any new regulations will be subjected to these additional analyses where applicable.[31]

E.O. 12866 and OMB Circular No. A-4, a guide developed by OMB for agencies to perform regulatory analyses required by E.O. 12866, emphasize that agencies should assess the costs and benefits of proposed regulations.[32] In some cases, regulations may transfer money from one group to another, creating no net costs or benefits to society as a whole, but nonetheless affecting those who have been affected by the transfers. When regulations have this effect, they are said to have a

[30]The MOA modifies the criteria in E.O. 12866 for a regulation to be subject to OIRA review. Under the MOA, tax regulations are subject to review by OIRA if they (1) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (2) raise novel legal or policy issues, such as by prescribing a rule of conduct backed by an assessable payment; or (3) have an annual non-revenue effect on the economy of $100 million or more, measured against a no-action baseline. OMB, *Memorandum of Agreement, Review of Tax Regulations under Executive Order 12866*, (Apr. 11, 2018). The MOA and OIRA review is consistent with our prior recommendation for OMB and Treasury to review the exemption of certain tax regulations from OIRA review. For more information, see GAO-16-720.

[31]Because the regulations for the provisions we examined more deeply were issued prior to April 2019, they were not subject to the additional analytical requirements for economically significant regulations.

[32]Office of Management and Budget Circular A-4 provides the Office of Management and Budget's guidance to federal agencies on the development of regulatory analysis as required under section 6(a)(3)(C) of Executive Order 12866. See Office of Management and Budget Circular A-4, *Regulatory Analysis* (Sept. 17, 2003). OIRA has also produced additional documentation to further guide agencies with regulatory impact analysis, see Office of Management and Budget, *Circular A-4, "Regulatory Impact Analysis: A Primer"* (Washington, D.C.: The White House).

distributive impact on society, and both E.O.12866 and OMB Circular A-4 instruct agencies to consider distributive effects.

Because revenues raised through taxation are transfers and are not costs or benefits to society, OMB Circular A-4 instructs agencies to develop a description of the distributional effects of a regulation that is separate from the costs and benefits.[33] Such an analysis should recognize the effects of the regulation across the population and the economy, divided up in various ways, such as income groups, race, sex, industrial sector, or geography.

Treasury's and IRS's significant proposed and final rules used to implement TCJA included a section analyzing the impact of the regulations; however, we found these analyses generally overlooked the distributional effects of the regulations arising from changes in tax liability and revenue collection. The illustrative examples below from TCJA regulations highlight the potential effects of Treasury's and IRS's regulatory decisions on tax liability and how those were reflected in Treasury's analysis.

- **Eligibility for QBI deduction for real estate and insurance brokers**. The QBI deduction provides a deduction of up to 20 percent of QBI, but depending on a taxpayer's taxable income, a specified service trade or business (SSTB) may not be a qualified trade or business and therefore may not produce QBI. The statute defines SSTBs as trades or businesses within a list of broadly-identified fields. Treasury and IRS determined that guidance clarifying the types of trades or businesses that would be considered to be within the listed fields was needed. As one example, the statute specified that "brokerage services" are considered an SSTB, but Treasury and IRS regulations further specified that "brokerage services" was limited to securities brokers, while other brokerage services, including real estate brokers and insurance brokers, were explicitly excluded from the definition of "brokerage services."[34] The choices Treasury and IRS made when providing additional guidance on SSTBs will significantly affect the tax burden and revenue collected from certain businesses.

  In its analysis of its decisions regarding the definitions of SSTBs, Treasury stated that articulating which business activities were or

[33]Office of Management and Budget Circular A-4, *Regulatory Analysis* (Sept. 17, 2003).

[34]26 C.F.R. § 1.199A-5(b)(2)(x).

were not considered SSTBs would provide clarity to taxpayers and prevent similarly-situated taxpayers from behaving differently, which could potentially create economic inefficiencies. Treasury did not address the fact that decisions about which business activities would be considered SSTBs would affect eligibility for a 20 percent deduction, and would affect the distribution of resources between certain taxpayers and the federal government.

According to data from IRS's Statistics of Income on sole proprietorships—one of several business structures that can earn a QBI deduction—categories representing insurance agencies and brokerages, and offices of real estate agents, brokers, property managers, and appraisers recorded more than $35 billion in net income in 2016.[35] The precise effect of not being categorized as an SSTB depends on the specific circumstances of the individual businesses, but given the magnitude of their annual net revenue, excluding real estate and insurance brokers from the definition of SSTB could lower their collective tax burden by billions of dollars annually. This could result in a reduction in federal tax revenues compared to the regulatory alternative of considering these sectors to be SSTBs.[36]

- **End date for opportunity zones**. An investor who invests capital gains in a Qualified Opportunity Fund, and maintains that investment for at least 10 years, is eligible to make an election at the time of sale that would render such gains no longer taxable. TCJA's statutory language did not specify an end date for investors to make this election, or a point at which taxpayers must dispose of investments in opportunity funds and recognize future capital gains to be taxed. IRS's

[35]We use the sole proprietor data as an illustrative example. Sole proprietorships are just one type of eligible entity that can produce QBI, along with partnerships, S corporations, trusts, and estates. Similar data were not readily available for these other business structures. The total income, and therefore total tax revenue, impacted by the decision to not consider real estate and insurance brokers to be SSTBs would be greater than the impact from sole proprietorships alone.

[36]The income from those sectors is presented to illustrate the potential magnitude of Treasury and IRS's decision, but not to assert that all such income would be affected. Below specified income thresholds, business income is eligible for the QBI deduction regardless of whether or not it is generated from an SSTB. Additionally, though the categories we used for our analysis—insurance agencies and brokerages and offices of real estate agents, brokers, property managers, and appraisers— from IRS's Statistics of Income align most closely with brokerage services, they are more encompassing (for example, by including property managers and appraisers).

October 2018 proposed regulations for opportunity zones stated that investors will have until December 31, 2047, to dispose of investments and make this election. The decision to set an end date of December 31, 2047, was one of four approaches discussed in the proposed regulations. The other options considered were to offer no further guidance on this issue, to specify no end date to elect the gain exclusion, and to allow the election until December 31, 2047, but without disposition of the assets.[37]

In its analysis of this decision, Treasury considered how providing clarity would help taxpayers make more efficient investments in opportunity zones. Treasury also considered how forced dispositions could lead to economic inefficiencies, while a longer time horizon could lead to greater investment, but more administrative costs.[38] Treasury did not, however, assess how the different decisions would influence the ultimate tax liability of investors. The determination of a disposition date can have a potentially large effect on tax liability. For example, if a taxpayer invested $1 million into an opportunity fund in 2019, and that grew at a 7 percent rate, it would be worth approximately $2 million after 10 years, $3.9 million after 20 years, and $6.6 million in 2047.[39] Under Treasury's and IRS's regulations, such capital gains—$5.6 million in this example—would be exempted from taxation.

We found that in the course of developing regulatory impact analyses for TCJA regulations, Treasury generally excluded any analysis of distributional effects due to changes in tax revenue collection. In the examples above, Treasury's decisions would significantly affect tax liability for certain taxpayers, which were not reflected in Treasury's analyses of the regulations.

Treasury officials did not conduct distributional analyses related to revenue effects because in their view, the MOA instructed them to focus only on non-revenue effects and superseded E.O. 12866. This view is

[37]83 Fed. Reg. 54279, 54287 (Oct. 29, 2018) IRS also issued additional proposed regulations and updated portions of previously proposed regulations on May 1, 2019. 84 Fed. Reg. 18652 (May 1, 2019).

[38]83 Fed. Reg. at 54287-54288.

[39]Seven percent is a commonly assumed average annual return in promotional materials for opportunity zone investments, and is slightly below the long-term performance of the U.S. stock market.

reflected in Treasury's guidance to staff on how to conduct regulatory analyses. Specifically, Treasury's internal guidance instructs staff to conduct distributional analyses, describing how benefits, costs, and transfers are distributed among subpopulations. This guidance further states that staff should not include transfers of revenue to the government, and Treasury officials told us that they did not think they should include any analysis of these effects in their regulatory impact analyses.

However, Treasury's understanding that revenue effects should be excluded from its analyses is inconsistent with the MOA and OIRA's position. While Section 1 of the MOA between Treasury and OMB excludes revenue effects for the purposes of determining whether or not a regulation is economically significant, and thus subject to OIRA review, that limitation does not appear elsewhere in the MOA, and the MOA does not state that revenue should be excluded from all analysis. OIRA officials told us that that all agencies, including Treasury, are subject to the same requirements of E.O. 12866, and that outside of the MOA, OIRA had no agreements with Treasury that would otherwise modify the requirements.

OIRA officials we spoke with reiterated that all agencies, including Treasury, should generally analyze the distributional impact of their regulations, and OMB's guidance identifies changes in tax revenue as an example of a transfer that would have a distributional impact.[40] OIRA officials stated that they recognize conducting these analyses was a new procedure for Treasury, and that Treasury officials were still learning how to apply the analytical framework in Circular A-4.

Treasury's internal guidance for conducting regulatory impact analyses is inconsistent with the standards in E.O. 12866 and OMB Circular A-4 that all agencies are expected to follow. Considering distributional effects related to tax revenue in the analyses would improve transparency surrounding how decisions made by Treasury and IRS affect various groups across the population. Robust analysis ensures that regulatory choices are made after appropriate consideration of the likely consequences, and provides transparency to the public and policymakers. Our prior work emphasizes the importance of transparency in the rulemaking process, and specifically that a regulatory impact

[40]Office of Management and Budget, *Circular A-4, Regulatory Analysis,* (Washington, D.C.: Sept. 17, 2003).

analysis consistent with E.O. 12866 and OMB Circular A-4 provides a systematic framework for identifying and assessing the economic tradeoffs associated with alternative regulatory choices.[41]

By excluding analyses of distributional effects due to changes in tax liability, including effects on tax revenue collection, Treasury and IRS risk making regulatory decisions that have significant economic effects without fully understanding the consequences of their decisions. Further, the consequences of Treasury and IRS decisions and the tradeoffs they considered are not transparent to the public without an acknowledgement of the distributional effects of tax revenue changes. A lack of full information may also inhibit OIRA's ability to effectively review the regulations and limit decision makers' understanding of the effects of a law.

IRS Data on TCJA Implementation Were Not Consistently Reliable, but Publicly-Available Information Indicates IRS has Made Considerable Progress in Some Areas

Data-reliability issues in IRS's documents for tracking implementation of TCJA's business and international provisions made it challenging to characterize both the scope and status of implementation activities. However, based on IRS data we corroborated with publicly-available information (e.g., published guidance), we determined that IRS has made considerable progress in implementing many of TCJA's business and international provisions through issuing guidance, updating IT systems, and training IRS staff. Given the magnitude of changes and near immediate effective dates, tax professionals we interviewed generally spoke favorably about IRS's pace in developing TCJA guidance and the quality of the guidance developed.

Reliability of Data on TCJA Implementation Status Could Be Improved

We found errors and inconsistencies in IRS's documentation used to track TCJA implementation. While we did not find errors and inconsistencies in the majority of IRS's TCJA implementation tasks, we did identify multiple instances of inaccurate recording of the task status, conflicting information in separate tracking documents, and several other miscellaneous errors. Examples include:

[41]GAO, *Federal Rulemaking: Agencies Included Key Elements of Cost-Benefit Analysis, but Explanations of Regulations' Significance Could Be More Transparent [Reissued on September 12, 2014],* GAO-14-714 (Washington, D.C.: Sept. 11, 2014).

- Seven TCJA provisions and six updates to the IRM were inaccurately identified as complete in the tracking document for the responsible BODs, potentially delaying work on implementation.
- IRS had cancelled IRM updates for five IRM sections for one provision, but tracking documents across multiple BODs did not accurately capture this fact, which could result in a misallocation of staff and resources.
- IRS officials could not verify whether all tasks included in TRIO's Enterprise Integrated Project Plan (EIPP) tracking document had been carried over to the new tracking documents following the dissolution of TRIO, increasing the risk of previously planned tasks mistakenly being left incomplete.
- At least 22 unique identifiers used to track tasks across iterations of TRIO's EIPP tracking document were inconsistent between updates, limiting IRS's ability to accurately track changes in guidance planning over time.

The lack of consistency and accuracy across IRS's tracking documentation is not in accordance with *Standards for Internal Control in the Federal Government*.[42] These standards direct management to use quality information to make informed decisions and evaluate the entity's performance or efficiency in achieving key objectives and addressing risks.

Changes in IRS's method of monitoring TCJA implementation status contributed to the data-reliability issues we identified. Early TCJA implementation efforts involved close coordination among multiple internal organizations. When TRIO was responsible for coordinating implementation efforts, it maintained a unified tracking system as part of its coordination management. However, when TRIO was disbanded, BODs and other IRS organizations used several different methods of tracking implementation status. According to IRS officials, in some cases, these new methods were not compared with TRIO's documentation to ensure all necessary tasks were carried over. Additionally, the implementation tracking tools used by these organizations were not uniform in data included, format, or the frequency with which they were updated. These issues may impede the ability to coordinate internally and to monitor overall implementation status.

[42] GAO-14-704G.

IRS officials stated that these inconsistencies did not pose obstacles to implementation, and that the IRS organization with overall responsibility for a given task was accurately tracking implementation status. While IRS officials said the inconsistencies did not impact implementation, developing a process or modifying the existing process to accurately and consistently track the implementation status of provisions could improve IRS's ability to prioritize resources and coordinate implementation efforts. For example, such tracking could help prevent misunderstandings regarding the implementation status of a provision that could lead management to reallocate resources away from ongoing implementation tasks. Further, it could help ensure IRS's implementation efforts are efficient, as each BOD would have the same information to help coordinate prioritization efforts.

While TCJA implementation is a one-time effort, IRS officials stated that efforts will extend beyond a decade into the future, as some provisions (such as opportunity zones) may require further guidance as key deadlines are reached. Additionally, IRS has identified the need for further guidance or implementation tasks as implementation has progressed, and the timeline for full implementation may be extended as IRS receives new information or observes changes in taxpayer behavior.

Further, IRS is implementing provisions of a new law reforming aspects of the agency and may face similarly extensive implementation projects in the future. The Taxpayer First Act, signed into law on July 1, 2019, calls for several IRS reforms, including changes to rules related to enforcement as well as modernizing IRS structure and technology, among other things.[43]

Management may be able to identify issues with, or improvements to, the implementation process using quality information on implementation status. By improving the ability to monitor and evaluate implementation progress, IRS will be better equipped to evaluate existing implementation processes. IRS also will be better positioned to effectively implement significant tax law or organizational changes in the future.

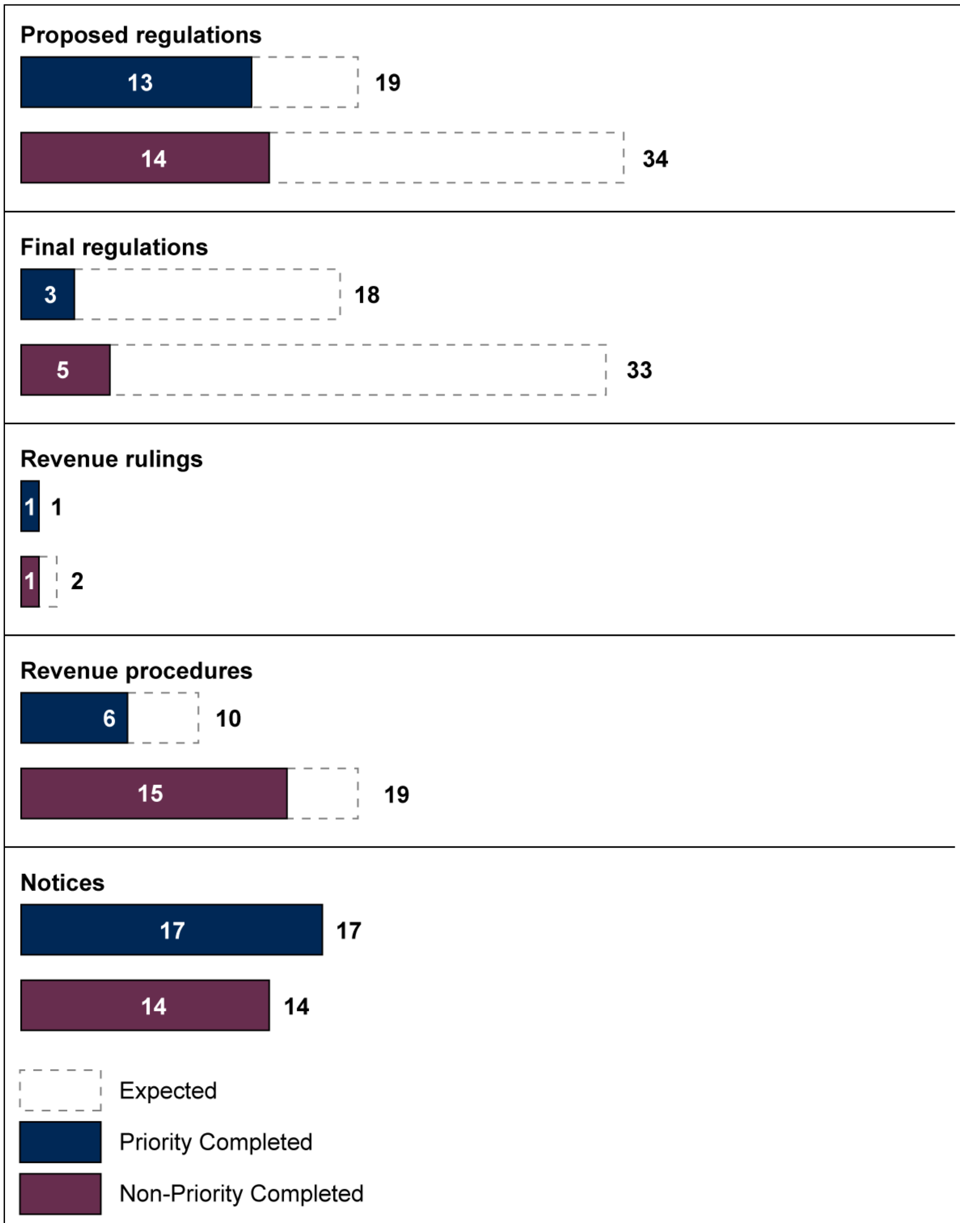
[43]Pub. L. No. 116-25, 133 Stat. 981 (July 1, 2019).

IRS Made Considerable Progress by Publishing Approximately Half of Total Guidance for High-Priority Provisions, but Has Significant Work Remaining

IRS has attempted to determine the amount of guidance required for TCJA implementation throughout the implementation process, but the amount of guidance has fluctuated for several reasons. For instance, in July 2018 IRS planned to issue 40 proposed regulations and 35 final regulations by December 2021 to implement the 86 business and international provisions. But by the end of the 2019 fiscal year, IRS planned to issue 53 proposed regulations and 51 final regulations by February 2022. According to IRS officials, they initially expected to issue less guidance than now planned, but as work progressed, they discovered they would need to issue more guidance or issue some guidance through multiple regulations to address taxpayer comments and inquiries. Conversely, in some cases IRS determined that some guidance initially planned was no longer necessary after further consideration.

As of the end of fiscal year 2019, IRS Chief Counsel reported that it had issued 90 pieces of guidance and was developing another 43 to implement the 86 business and international provisions of TCJA. Overall, as of the end of fiscal year 2019, IRS publicly issued approximately half of planned official guidance. As shown in figure 2, for the 12 provisions that IRS identified as high-priority, the agency issued 13 of 19 planned proposed regulations and three of 18 planned final regulations.

Figure 2: Proportion of Business and International Tax Cuts and Jobs Act of 2017 Guidance Issued as of End of Fiscal Year 2019



Source: GAO analysis of Internal Revenue Service (IRS) information. | GAO-20-103

Note: Pubic Law 115-97 is commonly known as the Tax Cuts and Jobs Act of 2017. See Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

IRS missed internal target dates for issuing 10 guidance documents initially targeted for publication by the end of the fiscal year, including three final regulations. According to IRS officials, several factors affected IRS's ability to issue guidance within planned time frames:

- **Ambitious project planning.** Scheduled completion dates for some tasks were "aspirational" and developed early in the implementation process. Officials stated that they understood from the beginning of implementation that their planned dates might change, and that they did not expect there to be any impact on taxpayers.
- **Revised regulatory review process**. As discussed earlier in this report, beginning in April 2018, OIRA began subjecting more tax regulations to further review as agreed to in the MOA between OMB and Treasury. Based on our analysis, from July 2018 to September 30, 2019, OIRA took an average of about 38 calendar days to review 25 TCJA business and international regulations.[44] See appendix III for a table of all TCJA regulations relating to business and international provisions reviewed by OIRA and associated review times.
- **Partial lapse in appropriations**. According to IRS officials, a partial lapse in appropriations from December 22, 2018, through January 25, 2019, contributed to implementation delays. For example, IRS officials estimated that the issuance of final regulations for the qualified business income deduction and repatriation tax was delayed 1 to 2 weeks. While IRS was generally able to continue working on TCJA implementation tasks, it had to allocate some resources towards unplanned administrative tasks during this period.[45] During a lapse of appropriations, the Antideficiency Act generally restricts agencies

[44]This average includes four regulations that were sent to OIRA prior to the partial lapse in appropriations in December 2018 that lasted through January 2019, which affected OIRA's ability to review these regulations in a timely manner.

[45]In October 2019, we issued a legal opinion finding that certain IRS activities during the 5-week lapse in appropriations violated the Antideficiency Act. The Antideficiency Act, codified at 31 U.S.C. § 1341, prohibits federal agencies from entering into obligations or expending federal funds in advance or in excess of an appropriation, and from accepting voluntary services, unless specifically authorized by law. We found that IRS lacked available budget authority to support activities to process tax remittances (payments submitted by individuals) and issue tax refunds, and that no exception to the Antideficiency Act permitted IRS to incur these obligations. See GAO, *U.S. Department of the Treasury—Tax Return Activities during the Fiscal Year 2019 Lapse in Appropriations*, B-331093 (Washington, D.C.: Oct. 22, 2019).

from continuing operations funded by annual appropriations. However, Congress passed a separate 2-year appropriation for IRS to perform TCJA implementation activities.

Some IRS personnel that would otherwise have been furloughed were instead able to continue TCJA implementation work through the use of this special appropriation.[46] Additionally, IRS had to develop justifications for the *Federal Register* to publish TCJA regulations during the lapse in appropriations that it would not have had to do in the absence of a partial lapse in appropriations, which reduced available resources for implementation tasks.

IRS officials also stated that they faced issues working with partners at Treasury and OIRA. Treasury's Lapse in Appropriations Plan states that Office of Tax Policy staff could work on policies to restore appropriations and developing revenue estimates for pending appropriations negotiations, but does not include work on TCJA. Further, while OIRA continued regulatory review in certain circumstances, approximately 67 percent of OMB's staff was furloughed.

Of the remaining guidance, IRS plans to issue 13 of the remaining final TCJA regulations related to business or international provisions by December 31, 2019. IRS plans to issue 12 final regulations in 2020, three in 2021, and one in 2022. It has not determined publication dates for 14 final regulations.

To implement TCJA, IRS has provided a substantial amount of written guidance. Between TCJA's enactment and the end of fiscal year 2019, IRS published 1,383 pages of guidance related to TCJA's business and international provisions in the Internal Revenue Bulletin, out of a total of 4,064 pages published during that period.[47] By comparison, from 2013 to 2015, IRS published approximately 2,000 pages of guidance annually. IRS also issued more than 115 pieces of business- and international-related products, including news releases, frequently asked questions,

[46]Consolidated Appropriations Act, 2018, Pub. L. No.115-141, div. E, tit. I, § 113 (Mar. 23, 2018).

[47]The 1,383 pages above do not include an additional seven pieces of guidance published in the *Federal Register*, but not the IRB. As published in the *Federal Register*, these regulations represent an additional 207 pages.

virtual webinars, YouTube videos, and targeted publications, such as the example in figure 3.

Figure 3: Example of IRS Targeted Publication

Source: Internal Revenue Service (IRS). | GAO-20-103

Tax practitioners we spoke with were generally favorable about IRS's pace in developing TCJA guidance and the quality of the guidance developed. For example, they generally stated that IRS's multi-pronged approach to providing both official guidance and other information sources was helpful and allowed practitioners to understand of the likely impacts of tax reform prior to the release of final regulations better. Additionally, Tax Notes—a well-regarded publisher of a collection of professional tax products—named the IRS's tax reform regulatory team as Person of the Year for 2018 for issuing many TCJA regulations in less than a year.[48]

IRS Prioritized TJCA IT Efforts over Other IT Activities Prior to the 2019 Filing Season, and Plans to Complete Additional Activities before the 2020 Filing Season

According to IRS officials, IRS's Information Technology organization completed all TCJA tasks that the organization agreed to complete prior to the opening of the 2019 filing season, including updates to electronic forms and the underlying technology IRS uses to receive returns.[49] According to IRS officials, they completed these tasks by prioritizing TCJA work over other tasks and modifying its routine processes for implementing IT changes.[50]

IRS's Information Technology organization also worked with the BODs to determine which data were most important to have in Extensible Markup Language (XML) format, which is more accessible than data in Portable Document Format (PDF) format. While BOD officials requested programming for TCJA-related requirements that would necessitate that the Information Technology organization enable forms in XML format, IRS's Information Technology organization ultimately determined that it could not deliver updates for all TCJA affected forms in advance of the 2019 filing season, and forms where IT could not deliver updates in XML

[48]Hoffman, William, "TCJA Reg Writers Earn Tax Notes' 2018 Person of the Year," *Tax Notes,* (Dec. 31, 2018), accessed November 3, 2019, https://www.taxnotes.com/special-reports/tax-system-administration/tcja-reg-writers-earn-tax-notes-2018-person-year/2018/12/14/28mhs.

[49]As IRS's IT work request tracking system did not distinguish work on TCJA's business and international provisions from other TCJA implementation work, tracking the implementation status of only business and international provisions is difficult. However, according to IRS documentation and officials, IRS completed all 174 TCJA tasks scheduled for completion prior to the start of the 2019 filing season on time, which includes IT tasks related to business and international provisions.

[50]According to IRS documentation, IRS has resumed work on all activities which had been slowed down or paused due to TCJA implementation efforts.

format would be implemented in PDF format. For example, according to IRS officials, they prioritized having tax year 2018 XML data for the repatriation tax because this tax was immediately effective for tax year 2017, had a short-lived time frame, and presented challenges for monitoring.[51] BODs requested that all affected forms be converted for the 2020 filing season.

To further facilitate the implementation of TCJA-related IT tasks, IRS officials told us that they designed a framework to streamline communication between the Information Technology organization, subject matter experts, and the IRS BODs. These sessions enabled staff to work through and identify IT requirements in real time, rather than requiring Information Technology organization staff to wait until the BODs submitted a work request to begin work.

As of October 2019, IRS's Information Technology organization had identified an additional 124 TCJA-related tasks for the 2020 filing season. Officials expected to complete these tasks prior to the filing season. According to IRS documentation and officials, these tasks include updating underlying programming of IT systems to capture tax return information in a way that can be more easily used for compliance purposes, updating critical IT systems, and implementing error resolution codes to correct some mistakes on submitted returns. While the Information Technology organization had not yet approved all work and some TCJA requested work was pending analysis or approval in its work tracking spreadsheet, according to Information Technology organization officials, they are aware of the work and proceeding with implementation for the Modernized e-File application, the system used to file returns electronically.

IRS Began Larger Scale In-Person Training at End of Fiscal Year 2019 and Will Continue Training Efforts in 2020

According to IRS documentation, the agency has begun training staff on several TCJA provisions, including high-priority provisions, and plans to deliver additional training in 2020. According to IRS, workforce training is a critical component of tax law implementation to ensure that the workforce is equipped to identify and address potential audit issues associated with the new tax law provisions as well as to provide the appropriate level of taxpayer service.

[51] The repatriation tax can be paid over 8 years, in some cases deferred indefinitely, and in some circumstances transferred. According to officials, IRS needs to be able to track and monitor taxpayer behavior in all of these circumstances.

According to IRS documentation and officials as of the end of fiscal year 2019, the agency delivered training for business and international TCJA changes in multiple formats, including virtual and in-person training. These sessions have addressed at least 28 of the 69 business and international provisions identified as requiring training. IRS began larger scale in-person training in August 2019 and is developing content for further training in fiscal year 2020. The in-person training primarily addresses high-priority TCJA provisions such as QBI deduction, opportunity zones, the repatriation tax, the limitation on the interest deduction, the tax on global intangible low-taxed income, and the base erosion and anti-abuse tax. IRS officials said that their training efforts have been a major undertaking and that they focused their training efforts on high priority provisions and provisions that affected a large number of taxpayers. Some of these training sessions will culminate in an interactive risk assessment exercise. IRS planned to train about 8,500 employees in these sessions.

IRS plans to continue TCJA training in 2020 as IRS finalizes regulations. According to SB/SE's implementation tracking documentation, it plans to complete training by the end of 2020. According to LB&I documentation, it plans to hold virtual training in March, May, and June 2020 addressing, among other things, some high priority provisions, including the repatriation tax and base erosion and anti-abuse tax.

Aspects of TCJA Present Compliance Challenges for IRS and Taxpayers

Lack of Final Regulations Create Uncertainty for Taxpayers and Enforcement Challenges for IRS

Treasury did not issue all planned final regulations within the 18 months the agency generally has to issue regulations retroactive to the date of a law's enactment or before taxpayers were required to file tax returns, which has the potential to be significant for both taxpayers and IRS.[52] Specifically, of the 51 planned final regulations to implement TCJA business and international provisions, Treasury issued five within the 18-month time frame.[53] Treasury also issued one temporary regulation within this time frame. Treasury did not release any final regulations for eight of its 12 priority provisions.

As discussed earlier in this report, taxpayers and other stakeholders appreciated the supplemental information Treasury provided in the absence of final regulations. According to IRS Chief Counsel officials, however, a significant effect of relying on proposed regulations rather than final regulations is uncertainty. In instances where Treasury has yet to issue regulations or any other guidance, taxpayers must rely on the statutory language to understand the law. For example, LB&I officials said that taxpayers may not be able to correctly calculate tax for foreign branch losses because IRS included limited information on related forms as final guidance had not yet been issued.[54]

[52]See 26 U.S.C. §7805(b)(2), which allows for the retroactive application of regulations issued within 18 months of the date of the enactment of the statutory provision to which the regulations relates. 26 U.S.C. §7805(b)(3) provides an exception to the 18 month limitation for regulations to prevent abuse.

[53]Treasury and IRS did not plan to issue all 51 final regulations by June 22, 2019. As described above, the number of regulations IRS planned to issue varied throughout TCJA implementation and the dates by which IRS planned to issue certain regulations changed over the course of implementation. In early May 2019, IRS officials provided us with a list of regulations they planned to finalize by the 18-month time frame. However, by the end of May 2019, IRS officials told us they did not plan to issue final regulations for one of the provisions on that list because they had determined that they did not need to have them be retroactively effective.

[54]Pub. L. No. 115-97, § 14102, 131 Stat. 2054, 2192 (Dec. 22, 2017).

Similarly, tax practitioners we interviewed cited several provisions in need of additional guidance and identified challenges associated with those provisions that have the potential to affect taxpayers' ability to comply with the law. Challenges identified by tax practitioners we interviewed included confusion regarding and challenges related to the definitions of "related party" and "interest" in the proposed regulations for the limitation on the deduction for interest and difficulty for individuals and corporations to understand and comply with international changes given the interdependence of several of the international provisions. A September 2019 Treasury Inspector General for Tax Administration (TIGTA) report also raised concerns related to taxpayers' ability to comply with the international provisions.[55]

Further, proposed regulations are subject to change when Treasury finalizes them, which could create additional burdens for taxpayers. For example, Treasury's proposed rule—issued in August 2018—for determining whether a foreign corporation's earnings are subject to the repatriation tax was modified from a 5-percent threshold for application of the special attribution rules relating to partnerships and trusts to a 10-percent threshold under the final regulations—issued in February 2019.[56] Because the repatriation tax was immediately effective, taxpayers needed to pay their tax liability, or make installment payments towards that liability, before IRS was able to finalize its regulations.

Some taxpayers who would have been subject to the tax had the proposed regulations been finalized without change may not be subject to this tax because of changes between the proposed and final regulations, and any payments towards repatriation tax liability would no longer be needed.[57] According to IRS officials, taxpayers who initially made

[55]TIGTA did not make recommendations in this report. For more information, see Treasury Inspector General for Tax Administration, *Tax Cuts and Jobs Act: Assessment of the Implementation of the International Provisions,* TIGTA-2019-34-064 (Washington, D.C.: Sept. 16, 2019).

[56]Generally, under the special attribution rules found at 26 CFR § 1.965-1(f)(45)(ii), stock owned by a partner will not be considered as being owned by the partnership for certain sections of the Internal Revenue Code if the partner owns less than 10 percent of the partnership's capital and profits. Similarly, the regulations use a 10 percent threshold for special attribution rules for trusts. See 26 C.F.R. § 1.965-1(f)(45)(ii).

[57]Some taxpayers may not subject to the repatriation tax to the same degree under Treasury's final regulation as they would have been if the proposed rule had been finalized without change. See 84 Fed. Reg. 1838 (Feb. 5, 2019). However, if these taxpayers repatriate their foreign earnings to the United States, they would need to pay the appropriate tax on their repatriated earnings.

repatriation tax payments but are not subject to the tax under the final regulations will need to file an amended return to receive a refund of their repatriation tax payments.[58]

The lack of finalized guidance can also create challenges for IRS in the agency's efforts to ensure compliance with the new law. For example, LB&I officials told us they have identified form changes needed related to at least one TCJA provision for which Treasury had yet to issue final regulations, but they need to be mindful when proposing form changes because final regulations could require additional form changes and could require rework. Further, in September 2019, TIGTA reported that the lack of final of final guidance delayed training for LB&I staff, which could hinder LB&I's ability to respond to emerging compliance risks.[59]

According to IRS Chief Counsel officials, if IRS believes that a rule articulated in proposed regulations under a statutory provision is correct, it may proceed to enforce that interpretation of the statute in the absence of final regulations. However, in the event of litigation, the interpretation set forth in the proposed regulations would not carry the same weight as final regulations.

IRS may also face additional challenges administering the law in instances where the agency has yet to issue proposed regulations. Treasury can issue final regulations that are retroactively effective to the proposed regulations. As of the end of fiscal year 2019, Treasury had not issued 27 planned proposed regulations for business and international provisions. Generally final regulations not issued by the end of calendar year 2019 would not be effective until 2020.[60] According to TIGTA, if IRS makes substantial changes to the proposed regulations, Treasury and IRS may decide not to apply those revisions retroactively to the date of the proposed regulations.[61]

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[58]This issue is separate from the issue described earlier in this report of confusion from IRS's initial guidance to taxpayers regarding how to make repatriation tax payments in the 2018 filing season that resulted in some taxpayers making additional payments that could not be refunded.

[59]TIGTA-2019-34-064.

[60]Under 26 U.S.C. § 7805(b)(3), the Secretary of the Treasury may provide that any regulation may take effect or apply retroactively to prevent abuse.

[61]TIGTA-2019-34-064.

While Treasury was unable to issue all final regulations within the 18-month time frame and before taxpayers needed to begin filing tax returns affected by TCJA changes, IRS took actions to mitigate the potential impact of the lack of final guidance. According to IRS officials, they prioritized which regulations needed to be issued to be retroactively applicable to the date of the law's enactment. For example, Treasury's QBI deduction regulations included anti-abuse rules to prevent taxpayers from being able to engage in transactions that will artificially increase their deduction.[62] Treasury's repatriation tax regulations also included rules preventing taxpayers from being able to take actions to reduce their repatriation tax liability.[63] Further, in one instance, Treasury issued a temporary regulation in a situation where Treasury did not have time to issue proposed and final regulations to prevent abuse of TCJA changes related to a deduction for dividends received from certain foreign corporations.[64]

[62] 84 Fed. Reg. 2952 (Feb. 8, 2019).

[63] 84 Fed. Reg. 1838 (Feb. 5, 2019).

[64] 84 Fed. Reg. 28398 (June 18, 2019). In conjunction with this final temporary regulation, IRS also issued a proposed regulation that the agency plans to subsequently finalize. IRS did not issue any other temporary regulations because Treasury and Chief Counsel determined that no other regulations needed to be issued that would be immediately effective.

IRS May Face Challenges Verifying Taxpayer-Reported Information for Some Provisions

We identified 11 business and international provisions where TCJA's statutory language either required or authorized additional information reporting to administer and enforce them.[65] These include the QBI deduction, repatriation tax, and base erosion and anti-abuse tax.[66] TCJA changes also enabled IRS to address a prior reporting gap related to foreign branch activity that will help with compliance and enforcement efforts, according to LB&I officials.[67]

As shown in the examples below, in some instances, the statute did not include an information reporting framework to enforce provisions, and IRS has taken some steps to mitigate information reporting gaps.

- **Limitation on interest deduction.** Tax practitioners we interviewed told us that they doubted that IRS would be able to verify information related to controlled foreign corporations that are subject to the limitation of business interest expense because there are limitations on information reporting from other countries. According to IRS officials, the statute made substantial changes to this code section and did not correspondingly include a framework for IRS to require information reporting.

  IRS is taking mitigation actions to help ensure compliance despite the lack of information reporting framework. For example, according to officials, IRS has the authority to require information from taxpayers and developed a new form to collect information needed to ensure taxpayer compliance with this change. In addition, IRS is planning to make changes to another form to help with compliance efforts.

[65] According to IRS officials, IRS and Treasury may require additional information reporting for TCJA changes where the statute did not directly specify reporting requirements. For example, IRS officials said they will need additional information reporting to implement changes related to the global intangible low-taxed income and the deduction for foreign-derived intangible income.

[66] The provisions we identified are section 11011, deduction for qualified business income; section 13306, denial of deduction for certain fines, penalties and other amounts; section 13309, recharacterization of certain gains in the case of partnership profits interests held in connection with performance of investment services; section 13517, computation of life insurance tax reserves; section 13520, tax reporting for life settlement transaction; section 13603, treatment of qualified equity grants; section 13821, modification of tax treatment of Alaska Native corporations and settlement trusts; section 14103, repatriation tax; section 14222, certain related party amounts paid or accrued in hybrid transactions or with hybrid entities; and section 14401, base erosion and anti-abuse tax.

[67] Pub. L. No. 115-97, § 14102, 131 Stat. 2054, 2192 (Dec. 22, 2017).

- **Opportunity zones**. While the statute did not grant IRS specific authority to require information reporting for opportunity zones—a tax expenditure that is intended to spur economic growth in low-income areas—IRS has general authority to require information reporting and plans to require and use information reporting to ensure compliance with this provision.[68] As shown in table 3, IRS plans to use information reported on four forms.

Table 3: Opportunity Zone-Related IRS Forms

Form number	Form title	New/ existing	Filer	Purpose
1099-B	Proceeds from Broker and Barter Exchange Transactions	Existing	Fund	Qualified opportunity funds will use this form when taxpayers dispose of interests in funds to report to IRS and taxpayers to facilitate the accurate reporting of these transactions.
8949	Sales and Other Dispositions of Capital Assets	Existing	Taxpayer	Taxpayers will report they are deferring tax on capital gains because they have invested gains in a qualified opportunity fund.
8996	Qualified Opportunity Fund	New for tax year 2018	Fund	Qualified opportunity fund will report whether they meet 90 percent investment standard and calculate of the associated penalty, if applicable.
8997	Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments	New for tax year 2019	Taxpayer	Taxpayers will submit form annually to report on new investments, investments held anytime during the year in qualified opportunity funds, and any dispositions of investments in qualified opportunity funds.

Source: GAO analysis of Internal Revenue Service (IRS) documentation. | GAO-20-103

Taxpayers who invest in qualified opportunity funds may qualify for potentially large benefits that are time dependent. When taxpayers initially invest eligible capital gains in qualified opportunity funds, they can defer the tax due on those gains until the earlier of 2026 or when taxpayers dispose, in whole or in part, of (e.g., sell or exchange) those investments. Specifically, taxpayers receive an increase in the basis of their investment in the qualified opportunity fund if they hold the investment at least 5 years and an additional increase in their basis if they hold their investments an additional 2 years.

[68]See 26 U.S.C. § 6011(a).

Taxpayers who hold investments at least 10 years can elect to have their investments valued at the fair market value when they dispose of the investments, and thus would not need to pay taxes on any gains on their initial investments.

IRS plans to use taxpayer-reported information and possibly some fund-reported information on the forms listed above in table 3 to identify taxpayers who have invested in qualified opportunity funds to confirm eligibility for tax benefits for investing in and holding those investments in qualified opportunity funds.

In other instances, third-party information is not available for IRS to corroborate taxpayer-related information. For example, above certain income thresholds only businesses engaged in an eligible trade or business qualify for the QBI deduction and this information is self-reported.[69]

Our past work has found that one of the important factors contributing to the tax gap is the extent to which information is reported to IRS by third parties.[70] For example, according to 2011–2013 IRS data, for income types where there is little or no third-party information reporting (e.g., business income), taxpayers misreported more than half of this income.

Without reliable information reporting, IRS will likely need to conduct labor-intensive audits, such as correspondence or face-to-face audits, to ensure compliance with certain TCJA provisions.[71]

The potential need to conduct labor-intensive audits could create challenges for IRS given recent trends in audit rates and staffing reductions. Specifically, IRS audit rates of large corporations with assets of $10 million or greater declined from 17.7 percent in fiscal year 2011 to 7.9 percent in fiscal year 2017.[72] We previously reported that IRS's

[69]Certain trades are not clearly delineated by either the statute or Treasury's regulations. Determination of eligibility depends on a careful analysis of facts and circumstances.

[70]See *Tax Gap: Multiple Strategies Are Needed to Reduce Noncompliance,* GAO-19-558T (Washington, D.C.: May 9, 2019).

[71]For items subject to substantial third-party information reporting, IRS is able to use automated processes to address noncompliance.

[72]GAO, *Internal Revenue Service: Strategic Human Capital Management is Needed to Address Serious Risks to IRS's Mission*, GAO-19-176 (Washington, D.C.: March 26, 2019).

staffing has declined each year since 2011, and has significantly reduced enforcement activities. In September 2019, TIGTA reported LB&I had difficulty hiring personnel with the skills needed for TCJA implementation.[73] This could limit IRS's ability to conduct correspondence or face-to-face audits to ensure taxpayer compliance, including TCJA provisions.

LB&I and SB/SE officials expressed their confidence in IRS's ability to audit TCJA provisions sufficiently. SB/SE has developed compliance plans for TCJA provisions identified as having the potential for fraud. SB/SE officials said TCJA work will be prioritized and SB/SE can use some filtering to help identify noncompliance. For example, regarding the QBI deduction, they said IRS may be able to identify returns that need further review based on tax return data. According to LB&I officials, they planned to hire an additional 600 staff, including about 300 revenue agents by the end of fiscal year 2019, and as of the end of the fiscal year, LB&I had selected 430 applicants to hire to help with compliance and enforcement efforts.

Revenue agents are of particular importance to IRS's enforcement efforts as they conduct audits of tax returns. In March 2019, we reported that IRS has skills gaps within its revenue agent workforce, and the agency was taking action to address those gaps.[74] For example, the agency established communications with revenue agents to increase awareness about detail and developmental opportunities, and was developing a plan for more effectively including revenue agents in management training. We recommended that IRS take actions to reduce skills gaps among revenue agents, including developing schedules for skills assessments and reporting on agency efforts to close those gaps. IRS agreed with our recommendation and, as of December 2019, IRS plans to report on efforts to close skills gaps among revenue agents by December 2021.

Limited Data Accessibility Creates Compliance Challenges for IRS

Because IRS had not yet updated all systems prior to accepting tax year 2018 (filing season 2019) returns, IRS was not able to capture all return information in XML format—a format that allows for greater accessibility

[73]According to TIGTA, LB&I was able to hire two senior advisors to help with TCJA implementation and LB&I officials reported these advisors will help alleviate TCJA implementation challenges. See TIGTA-2019-34-064.

[74]GAO-19-176.

and analysis. According to IRS documentation and officials, the agency was unable to obtain Extensible Markup Language (XML) data for 11 provisions that LB&I and SB/SE had requested for tax year 2018, including certain high-priority provisions. Instead, according to IRS officials, the agency captured this information in PDF, which is challenging for officials to use for data analytics and trend analysis. According to IRS officials, examiners will be able to view the PDFs and use that information if the return is selected for audit. Officials also told us they have other ways to select returns for audit in the absence of XML data.

While the agency does not have any agency-wide plans to retroactively convert PDF data to XML data, which could help with compliance analytics and planning, IRS is capable of conducting this work. For example, IRS staff could transcribe, or manually enter, selected information from returns filed on paper into IRS's IT systems to process these returns. Additionally, Information Technology organization officials told us they could develop a program to convert PDF forms to an XML format, if the effort is deemed a high priority.

Converting data into usable formats for compliance purposes would be consistent with IRS's strategic plan and *Standards for Internal Control in the Federal Government*. IRS's strategic plan includes a strategic goal to advance data access, usability, and analytics to inform decision-making and improve operational outcomes.[75] Specifically, IRS is to use analytics to improve enforcement efforts and maximize learning from tests and data. According to *Standards for Internal Control in the Federal Government*, agencies should use quality information to achieve their objectives. As part of this, agencies should obtain data and process these data into quality information.[76]

LB&I officials said they are taking steps to convert their PDF data into useable data for compliance purposes. According to LB&I officials, they identified which provisions' data would be useful to retroactively transcribe and they are coordinating with other parts of IRS to complete the transcription. They identified the data on forms related to certain new TCJA provisions as a higher priority for transcribed data. According to officials, they then coordinated with various IRS offices, including the

[75]IRS Fiscal Years 2018-2022 Strategic Plan.

[76]GAO-14-704G.

Office of Research Applied Analytics and Statistics, that have the capability to use optical character recognition technology to convert certain forms for these TCJA sections into a more useable format. Statistics of Income, a division within the Wage and Investment Division, is providing clerical staff to perform data validation on the converted data. According to LB&I officials, LB&I plans to use this information to help develop filters and compliance models and it will enable them to conduct analysis earlier than planned because they had not expected to have access to this data.

Unlike LB&I, SB/SE had not reviewed the costs and benefits of converting PDF forms for their provisions to determine which PDF forms, if any, would be a good use of IRS resources to convert to XML format to help with compliance planning. According to SB/SE officials, they did not know IRS had the capacity to retroactively convert PDF data to XML format and were unaware of LB&I's efforts to convert select TCJA PDF forms to useable data.

Assessing the costs and benefits of converting PDF data to a more useable format, such as XML format, would be consistent with OMB guidance on using cost-benefit analysis to support agency planning efforts. OMB provides guidance to agencies for conducting economic cost-benefit and cost-effectiveness assessments that promote efficient resource allocation through well-informed decision-making.[77] These assessments should consider different alternatives to meet program objectives along with a discussion of costs and benefits.

For provisions where IRS does not have XML data, IRS may not be able to adequately identify both intentional and unintentional compliance risks and may be missing opportunities to better ensure compliance with and enforce TCJA provisions. For example, we previously reported that without comprehensive transcribed data, examiners cannot immediately access and review all data reported on tax returns, which burdened

[77]OMB Circular No. A-94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs* (Washington, D.C.: 1992).

taxpayers as well as made examiners less efficient in doing their jobs.[78] According to IRS officials, retroactively transcribed data would be helpful to SB/SE for compliance planning and enforcement efforts, especially for at least one TCJA provision.[79] Further, taxpayers may think they are in compliance and may not be alerted to their errors until IRS has data stored in a format that can be analyzed more easily. Similarly, in October 2011 we reported that IRS said that having more tax return information available electronically, such as through transcription, would reduce burdensome examinations for compliant taxpayers, as well as facilitate enforcement efforts, make case resolution faster, and increase compliance revenue.[80]

However, without an analysis of the costs and benefits of retroactively converting PDF data to XML data, SB/SE cannot determine which PDF forms would likely yield benefits that would outweigh the costs of this effort. Management also cannot make an informed decision as to which PDF data would benefit SB/SE if converted to XML format without this information. While IRS may not have complete data on the potential benefits of converting PDF data to XML data, high-level analysis could show whether the potential benefits outweigh the costs. In instances where IRS finds that potential benefits outweigh the costs, SB/SE and IT could provide this information to management to inform its decision as to whether the work is cost effective. Using this information, management

[78]GAO, *Tax Administration: IRS Could Improve Examinations by Adopting Certain Research Program Practices,* GAO-13-480 (Washington, D.C.: May 24, 2013). In this report we made four recommendations to IRS, including that IRS make all electronic data collected on Forms 1040 available to examiners to improve the effectiveness of enforcement actions and that IRS transcribe certain tax return data on paper returns into electronic data and that IRS make all electronic data collected on Forms 1040 available to examiners to improve the effectiveness of enforcement actions. IRS has implemented the first recommendation and has taken steps to implement the second recommendation but has not determined whether transcribing certain data from paper lines would be cost effective for helping with compliance efforts.

[79]IRS officials said that they have some data they can use to help with compliance and enforcement efforts.

[80]GAO, *E-Filing Tax Returns: Penalty Authority and Digitizing More Paper Return Data Could Increase Benefits,* GAO-12-33 (Washington, D.C.: Oct. 5, 2011). In this report we made five recommendations to IRS, including that IRS develop a prioritized list of forms to be added to the Modernized e-File system and determine the costs and benefits of transcribing certain tax return data. As of February 2020, IRS had implemented four of these recommendations and does not plan to implement the fifth recommendation to determine costs and benefits of transcribing certain lines of tax return data.

could determine if the work should be conducted, and if it should be a high priority for SB/SE and the Information Technology organization.

Conclusions

As of the end of fiscal year 2019, IRS made considerable progress implementing TCJA, however, much work remains, and IRS has publicly issued approximately half of planned official guidance.

Given the magnitude and immediate effective dates for many TCJA provisions, Chief Counsel collaborated earlier and more closely with IRS BODs which enabled the agency to more efficiently and effectively develop guidance that accounts for tax administration and enforcement concerns. Moving forward, IRS can leverage the lessons learned from this enhanced collaboration. By identifying situations when this earlier and more frequent collaboration would benefit IRS's guidance development process and by updating any relevant policies or procedures to document beneficial collaboration practices, IRS will be better prepared to implement the next set of complex or time-sensitive changes to the tax code.

In developing regulations for TCJA provisions, Treasury and IRS made decisions that could potentially affect tax liability by billions of dollars per year, which would have distributional effects on the economy, but these effects were not included in their regulatory analyses. The distributional effects of tax liability changes from regulations can be significant; updating Treasury's internal guidance to include analysis of these effects in the rulemaking process would provide greater transparency to the public, and would better inform decision makers who must determine which regulatory alternative is the best to adopt.

Addressing data reliability issues in IRS's tracking documentation could better ensure that further TCJA implementation work is performed in an efficient and timely manner and better enables IRS to identify opportunities for improvements to their implementation process. Additionally, this could enable IRS to better complete and evaluate existing TCJA implementation processes, as well as be better equipped to improve those processes for future application.

SB/SE's ability to analyze tax return data and efficiently plan compliance efforts is impeded by the lack of easily accessible and useable data for certain TCJA changes. Taking steps to obtain these data in instances where the potential benefits outweigh the costs would help the agency identify return filing trends and potential noncompliance to help the agency improve audit selection. It would also help SB/SE fulfill IRS's goals of improving operations using data analytics and would also help the agency be able to effectively ensure compliance with and enforce TCJA provisions.

Recommendations

We are making a total of five recommendations, including four to IRS and one to Treasury. Specifically:

The Chief Counsel of the Internal Revenue Service, in coordination with appropriate offices, should identify and document parameters and procedures for applying enhanced collaborative approaches to regulation and other guidance development with IRS Business Operating Divisions. (Recommendation 1)

The Commissioner of Internal Revenue should develop a process to accurately and thoroughly capture implementation status of ongoing projects in accordance with *Standards for Internal Control in the Federal Government*. (Recommendation 2)

The Commissioner of Small Business/Self Employed should coordinate with appropriate IRS divisions or offices to identify the costs and benefits of retroactively transcribing taxpayer data resulting from TCJA. (Recommendation 3)

Based on the costs and benefits identified in recommendation 3, the Commissioner of Small Business/Self Employed should determine which TCJA provisions' data should be converted into a more useful electronic format for compliance and enforcement purposes and work with the appropriate offices to obtain the transcribed data, as appropriate. (Recommendation 4)

The Assistant Secretary of Tax Policy should update Treasury's internal guidance to ensure that Treasury's regulatory impact analyses include examination of the distributional effects of revenue changes when regulations influence tax liability. (Recommendation 5)

Agency Comments and Our Evaluation

We provided a draft of this report to the Commissioner of Internal Revenue, the Secretary of the Treasury, and the Director of the Office of Management and Budget for review and comment. In its written comments, which are summarized below and reproduced in appendix IV, IRS disagreed with the four recommendations addressed to that agency.

The Director of Treasury's Office of Tax Analysis did not comment on the merits of the recommendation directed to Treasury and provided other comments by email, which are summarized below. In addition, IRS, Treasury, OMB also provided technical comments, which we incorporated as appropriate.

IRS disagreed with our recommendation to identify and document parameters and procedures for applying enhanced collaborative approaches to regulation and other guidance development (Recommendation 1). IRS stated it believes that its Internal Revenue Manual provides sufficient guidance and flexibility on when such enhanced collaboration is appropriate and that establishing specific criteria is likely to reduce the flexibility and independent judgement that presently exists. Additionally, IRS said that this type of collaboration is not needed for more routine tax law changes.

We are recommending that IRS document the collaboration procedures that were cited as critical for implementing TCJA for use in specific instances—such as during complex or time-sensitive tax law changes. As discussed in the report and acknowledged in IRS's letter, this collaboration was particularly helpful for TCJA implementation and had many benefits, such as faster decision-making and identifying enforcement concerns earlier in the guidance development process.

We believe that by implementing this recommendation, IRS can help ensure that institutional knowledge and beneficial practices from TCJA implementation will be documented and effectively leveraged to support implementation of future time-sensitive or complex tax law changes without restricting IRS's flexibility. Documenting procedures would ensure IRS can retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel.

For our recommendation that IRS develop a process to accurately and thoroughly capture implementation status of ongoing projects in accordance with federal internal control standards (Recommendation 2), IRS disagreed that a new process is needed and said that inaccurate reporting of implementation status did not harm IRS implementation of any TCJA provision.

As we acknowledge in this report, IRS officials told us implementation was not impeded by data inconsistencies. However, accurately and thoroughly capturing implementation status on ongoing projects would provide accurate information to decision makers and could prevent potential misreporting, mismanagement, or inefficient resource investment in the future. For example, our ability to use these data to inform Congress of TCJA implementation status was impeded because we deemed the data unreliable for this purpose. Our recommendation does not require IRS to develop a new process for capturing and tracking implementation status. If deemed appropriate, IRS could, instead, update or modify existing processes in ways designed to ensure data reliability.

IRS disagreed with our recommendations to identify the costs and benefits of retroactively transcribing certain taxpayer data and then to implement transcription based on this determination (Recommendations 3 and 4). IRS stated that retroactively transcribing data is a resource-intensive, manual process.

We disagree with this assertion. LB&I is using optical character recognition to convert PDF data into a more useable format, which is a semi-automated process. Further, as also stated in this report, IRS IT officials we interviewed told us they had the capability to develop a program that would convert PDF data to a more useable format if IRS management deemed it a priority.

In its response, IRS also states that the benefits of converting data to a more useable format are unknown. We do not expect IRS to conduct a complex and detailed cost-benefit analysis. Rather, as acknowledged in this report, a high-level analysis of costs and benefits could help IRS management determine what, if any, data would benefit compliance and enforcement efforts. IRS could use readily available existing information (such as the number of returns affected by a certain provision, LB&I and IT cost data on conversion efforts already implemented, or the usefulness of past compliance analytics in similar areas) to inform the analysis.

IRS also states that the potential noncompliance costs are unknown until the agency completes audits of TCJA provisions. As we reported, conducting audits is labor-intensive and IRS's audit rate and enforcement efforts have declined since 2011. Further, senior IRS officials we interviewed stated that a limitation of taxpayer information in the PDF format is that it is not easily analyzed. Therefore, we believe that converting data in instances where the benefits outweigh the costs would better position IRS to more effectively and efficiently pursue its mission of ensuring taxpayer compliance.

In an email, the Director of Tax Analysis indicated that Treasury generally did not agree with the report's findings regarding its economic analyses.

The Director did not specifically comment on the merits of our recommendation that Treasury update its guidance for conducting regulatory impact analyses (Recommendation 5), but stated that the analyses underlying Treasury's tax regulations have fully complied with the MOA established with OMB, which in Treasury's view focuses on non-revenue effects.

We maintain that decisions Treasury and IRS made when developing regulations to implement TCJA could potentially impact tax liability by billions of dollars per year; however, Treasury's internal guidance dictates that these revenue effects should not be included in its economic analyses of the regulations.

Amending Treasury's guidance to ensure that impacts on tax revenue and liability are included would make the guidance consistent with E.O. 12866 and OMB Circular A-4, which underlie the MOA and instruct agencies to analyze the distributional consequences of regulations. Including these effects of tax regulations, as we recommended, is necessary in order to provide greater transparency to the public and better inform decision makers, who must determine which regulatory alternative is the best to adopt.

We are sending copies to the appropriate congressional committees. We are also sending copies of the report to the Commissioner of Internal Revenue, the Secretary of the Treasury, the Director of the Office of Management and Budget, and other interested parties. In addition, this report will be available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-9110 or lucasjudyj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs are on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

Sincerely yours,

Jessica Lucas-Judy
Director, Tax Issues
Strategic Issues

Appendix I: Objectives, Scope, and Methodology

This report (1) examines the Internal Revenue Service's (IRS) processes that it has in place to provide guidance to taxpayers on Public Law 115-97,[1] commonly referred to as the Tax Cuts and Jobs Act of 2017 (TCJA) business and international provisions; (2) assesses the economic analyses Department of the Treasury (Treasury) conducted as part of the regulatory development process; (3) evaluates IRS monitoring of implementation of these provisions and describes implementation status; and (4) examines any challenges that could affect IRS's ability to effectively administer these provisions. We defined business and international provisions as provisions assigned to IRS's Large Business & International (LB&I) Division or Small Business/Self-Employed (SB/SE) Division.[2]

To examine IRS's processes to provide guidance to taxpayers, we analyzed IRS documentation, such as prioritization records, guidance development records, and actual regulations and other guidance documents (e.g., notices and news releases) and interviewed IRS officials. Specifically, we reviewed IRS's documentation of prioritization of TCJA provisions and interviewed IRS officials in the Tax Reform Implementation Office (TRIO) and the Office of Chief Counsel (Chief Counsel) to examine the criteria IRS used to prioritize TCJA provisions for implementation. We also reviewed IRS documentation on internal coordination and interviewed IRS TRIO and Chief Counsel officials to examine IRS's strategy for and process of guidance development and IRS's plan to provide taxpayers with timely information. We used criteria from *Standards for Internal Control in the Federal Government* and our key practices for collaboration to determine the extent to which IRS's

[1]To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

[2]IRS has four primary divisions, business operating divisions that responsible for the major customer segments and other taxpayer-facing functions. LB&I and SB/SE are two of these BODs. SB/SE serves approximately 57 million small business/self-employed filers who are fully or partially self-employed individuals and small businesses. LB&I serves corporations, subchapter S corporations, and partnerships with assets greater than $10 million. It also serves U.S. citizens and residents with offshore activities and nonresidents with U.S. activities. Wage and Investment (W&I) and Tax Exempt/Government Entities (TE/GE) are the other two IRS BODs. W&I serves approximately 155 million taxpayers, including those who file jointly, with wage and investment income only. TE/GE serves customers across three distinct taxpayer segments - Employee Plans, Exempt Organizations, and Government Entities.

process for providing guidance to taxpayers was consistent with these standards and best practices.[3]

To assess the economic analyses Treasury conducted as part of the regulatory development process, we analyzed IRS, Treasury Office of Tax Policy (OTP), and Office of Management and Budget (OMB) documentation detailing the regulatory development and decision-making processes. We also interviewed officials from IRS TRIO, Chief Counsel, OTP, and OMB Office of Information and Regulatory Affairs (OIRA). Specifically, to identify the factors Treasury and IRS considered when analyzing trade-offs presented by different regulatory options to decide which regulatory options to select, we analyzed underlying regulatory development documentation and interviewed relevant officials. For example, we examined issues lists, internal memorandums, emails discussing regulatory alternatives and their tradeoffs, and early drafts regulations with internal comments.

We also analyzed TCJA published regulations and interviewed OIRA and Treasury OTP officials to determine the extent to which Treasury OTP and IRS included discussions of regulatory alternatives and cost-benefit and economic analyses of these alternatives in the published regulations. We used criteria from OMB regulatory guidance for executive branch agencies to examine Treasury's development and analyses of regulatory alternatives. This guidance includes the *Memorandum of Agreement* (MOA) between Treasury and OMB prescribing OMB review of tax regulations under Executive Order 12866; Executive Order 12866, *Regulatory Planning and Review*; and OMB Circular A-4, *Regulatory Analyses*, to determine the extent to which Treasury's analyses met OMB guidance for developing regulations.[4]

To describe the implementation status of business and international TCJA provisions, we analyzed IRS project management documentation, such as IRS's Enterprise Integrated Project Plan (EIPP) for TCJA

[3]GAO, *Standards for Internal Control in the Federal Government,* GAO-14-704G (Washington, D.C.: Sept. 10, 2014); and *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms,* GAO-12-1022 (Washington, D.C.: Sept. 27, 2012).

[4]Office of Management Budget, *Memorandum of Agreement, Review of Tax Regulations under Executive Order 12866*, (Apr. 11, 2018); Exec. Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 51,735 (Oct. 4, 1993); and Office of Management and Budget, *Circular A-4: Regulatory Analysis* (Washington, D.C.: Sept. 17, 2003).

implementation and publicly issued guidance and met with IRS officials. Specifically, we analyzed EIPP to determine which tasks were guidance or training related based on description, and developed keywords to limit our dataset to only relevant tasks. We interviewed IRS TRIO officials to ensure we accurately interpreted the description and status of the identified implementation tasks. We monitored for progress on guidance tasks by regularly reviewing IRS's tax reform website and the *Federal Register*, as well as SB/SE and LB&I's implementation trackers and Chief Counsel's guidance planning documentation. We reviewed Chief Counsel, LB&I, and SB/SE documentation (e.g., implementation trackers) and met with those officials to understand their internal tracking mechanisms for TCJA tasks and implementation status. To monitor training tasks, we used the EIPP to establish which provisions would require training and reviewed training documentation (e.g., training schedules and materials) from LB&I and SBSE. To describe and monitor information technology (IT) implementation status, we analyzed IRS's Information Technology organization's TCJA implementation documentation and met with IRS Information Technology organization officials. We reviewed IRS's IRM website to determine whether IRS had updated its IRM sections as planned in its EIPP and other planning documents.

While we identified potential data reliability issues with the EIPP, LB&I's implementation tracking documentation, and SB/SE's implementation tracking documentation (including inaccurate recording of the completion status of multiple categories of tasks, inconsistent use of unique task identifiers across tracking documentation, and potential errors introduced in the transition from the EIPP to the subsequent tracking documentation), we determined that the data were sufficiently reliable for the purpose of reporting the status of guidance releases, training, and overall TCJA IT tasks. We did not find the data sufficiently reliable to report on the status of IRM updates. We were also unable to report on the number of IT tasks specific to business and international provisions as a subset of overall TCJA IT implementation because IRS's IT organization did not track work by TCJA section.

To assess the reliability of the EIPP, we met with TRIO officials to understand how the EIPP was created and updated, as well as verified information from outside sources, including the *Federal Register* and IRS's tax reform website. After identifying potential discrepancies in LB&I's and SB/SE's TCJA tracking documentation, we followed up with SB/SE and LB&I to determine whether the status of our selected tasks was accurate and complete. SB/SE and LB&I provided responses and statements indicating that the status of some tasks was not accurately recorded. For example, we identified an instance where LB&I's tracking documentation had a provision's final regulations listed as issued in July 2019, when IRS had yet to issue the guidance. Based on these discrepancies and inconsistencies, we used criteria from the *Standards for Internal Control in the Federal Government* to evaluate IRS's project management activities.

To identify the impact of OIRA's effect on the status of TCJA implementation, we analyzed information available on the agency's public website to determine the length of time of OIRA review of regulations. We compared the length of time of OIRA's review to agreed-upon time frames for OIRA review of tax regulations in the *Memorandum of Agreement, Review of Tax Regulations under Executive Order 12866* (MOA) between Treasury and OMB to determine the extent to which OIRA met the MOA's 10- and 45-day time frames.[5]

To examine challenges that could affect IRS's ability to effectively administer these provisions, we analyzed TCJA and IRS documentation. Further, we interviewed TRIO, LB&I, SB/SE, IT, Chief Counsel officials, and outside tax practitioners. We analyzed TCJA's statutory language to identify instances where the law included compliance safeguards, such as anti-abuse provisions or information reporting requirements. We reviewed IRS documentation (e.g., SB/SE compliance plans) and interviewed IRS officials to understand IRS's views on the opportunities, challenges, and risks to administering and ensuring compliance with the new law. We also interviewed and subsequently analyzed statements from seven randomly selected tax practitioners who had submitted public comments on IRS's proposed regulations for the qualified business income (QBI) deduction, opportunity zones, and the repatriation tax (see below for discussion of provisions we further analyzed) to identify outside perspectives on challenges for IRS administration and enforcement.[6]

We downloaded the public comments on these proposed regulations on April 9, 2019. For the QBI deduction, the open comment period was from August 16, 2018, to October 1, 2018, and as of the time we downloaded

[5]Office of Management Budget, *Memorandum of Agreement, Review of Tax Regulations under Executive Order 12866*, (Apr. 11, 2018).

[6]In one instance, one of the tax practitioners we selected referred us to his colleague who was responsible for commenting on IRS proposed regulations.

comments, there were 340 comments. For the repatriation tax, the open comment period was from August 9, 2019, to October 9, 2019, and as of the time we downloaded comments, there were 188 comments. For opportunity zones, the open comment period was from October 29, 2018, to February 8, 2019, and as of the time we downloaded comments, there were 185 comments.

We also interviewed tax practitioners from two of the four "Big Four" tax firms and one outside tax practitioner to which we were referred to describe some outside opinions' on challenges for IRS administration and enforcement.[7] The views expressed in these interviews are not necessarily representative of those of other tax practitioners, or tax practitioners as a whole, and the views of the tax practitioners we interviewed are being used as illustrative examples throughout our report. We examined these challenges and risks and subsequently followed up with IRS to examine the extent to which IRS was aware of them and planning mitigating actions to address them. We used IRS's strategic plan and to *Standards for Internal Control in the Federal Government* as criteria for identifying any gaps between mitigation efforts and overall agency-wide goals and priorities.[8]

As part of our work, we further analyzed three provisions—the QBI deduction, opportunity zones, and the repatriation tax—to gain specific insights into the decision-making process for prioritizing and developing guidance and regulations and factors that may affect IRS' ability to effectively administer these provisions. We selected these three provisions for closer examination based on a number of factors, including (1) IRS designating them higher priority for implementation and identification, and (2) IRS, the National Taxpayer Advocate, and other knowledgeable stakeholders identifying them as especially challenging or complex to implement, administer, or enforce. Further, these three selections ensured we were able to examine at least one provision impacting domestic taxpayers managed by SB/SE division and at least one provision impacting foreign, or multinational, taxpayers managed by LB&I.

[7]We attempted to interview tax practitioners from the other two "Big Four" firms, but one did not respond to our meeting request and one declined our meeting request.

[8]Internal Revenue Service, *IRS Fiscal Years 2018-2022 Strategic Plan*, Publication 3744 (Apr 2018), and GAO-14-704G.

We conducted this performance audit from August 2018 to February 2020 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.

Appendix II: Implementation Status of Tax Cuts and Jobs Act of 2017 (TCJA) Business and International Provisions

Table 4: Implementation Status of Tax Cuts and Jobs Act of 2017 (TCJA) Business and International Provisions, according to IRS documentation, as of the end of fiscal year 2019

Section Number	Provision Title	Implementation Status of Planned Information and Guidance[a]	Responsible Business Unit
11011	Deduction for qualified business income.	(3) Notices ●●● (3) Revenue Procedures ●◒○ (3) Proposed Regulations ●●● (3) Final Regulations ●◒◒	Small Business/Self-Employed (SB/SE)
11012	Limitation on losses for taxpayers other than corporations.	(1) Revenue Procedure ◒	SB/SE
11024	Increased contributions to ABLE accounts.	(1) Notice ● (1) Proposed Regulation ◒ (1) Final Regulation ○	SB/SE
11025	Rollovers to ABLE programs from 529 programs.	(1) Notice ●	SB/SE
11047	Suspension of exclusion for qualified bicycle commuting reimbursement.	No guidance planned	SB/SE
11048	Suspension of exclusion for qualified moving expense reimbursement.	(1) Notice ●	SB/SE
11061	Increase in estate and gift tax exemption.	(1) Proposed Regulation ● (1) Final Regulation ◒	SB/SE
11071	Extension of time limit for contesting IRS levy.	No guidance planned	SB/SE
12001	Repeal of tax for corporations.	(1) Proposed Regulation ○ (1) Final Regulation ○	SB/SE
12002	Credit for prior year minimum tax liability of corporations.	No guidance planned	SB/SE
13001	21-percent corporate tax rate.	(2) Notices ●●	Large Business and International (LB&I)
13002	Reduction in dividend received deductions to reflect lower corporate income tax rates.	No guidance planned	LB&I
13101	Modifications of rules for expensing depreciable business assets.	(1) Revenue Procedure ●	SB/SE
13102	Small business accounting method reform and simplification.	(2) Revenue Procedures ●○ (2) Proposed Regulations ○○ (2) Final Regulations ○○	LB&I
13201	Temporary 100-percent expensing for certain business assets.	(1) Notice ● (1) Revenue Procedure ● (2) Proposed Regulations ●● (1) Final Regulation ●	SB/SE

Section Number	Provision Title	Implementation Status of Planned Information and Guidance[a]	Responsible Business Unit
13202	Modifications to depreciation limitations on luxury automobiles and personal use property.	(2) Notices ●● (2) Revenue Procedures ●● (1) Proposed Regulation ● (1) Final Regulation ◒	SB/SE
13203	Modifications of treatment of certain farm property.	No guidance planned	SB/SE
13204	Applicable recovery period for real property.	(1) Revenue Procedure ●	SB/SE
13205	Use of alternative depreciation system for electing farming businesses.	(1) Revenue Procedure ●	SB/SE
13206	Amortization of research and experimental expenditures.	(1) Proposed Regulation ○ (1) Final Regulation ○	LB&I
13207	Expensing of certain costs of replanting citrus plants lost by reason of casualty.	(1) Revenue Procedure ●	LB&I
13221	Certain special rules for taxable year of inclusion.	(1) Announcement ◒ (2) Notices ●● (3) Revenue Procedures ●●● (3) Proposed Regulations ●●● (1) Final Regulation ●	LB&I
13301	Limitation on deduction for interest.	(1) Notice ● (3) Revenue Procedures ●◒◒ (2) Proposed Regulations ●◒ (2) Final Regulations ◒○	SB/SE
13302	Modification of net operating loss deduction.	(2) Proposed Regulations ◒○ (2) Final Regulations ○○	SB/SE and LB&I
13303	Like-kind exchanges of real property.	(1) Revenue Procedure ● (1) Proposed Regulation ◒ (1) Final Regulation ○	SB/SE
13304	Limitation on deduction by employers of expenses for fringe benefits.	(2) Notices ●● (1) Revenue Procedure ◒ (2) Proposed Regulations ◒○ (2) Final Regulations ○○	LB&I
13305	Repeal of deduction for income attributable to domestic production activities.	(1) Proposed Regulation ● (1) Final Regulation ○	LB&I
13306	Denial of deduction for certain fines, penalties, and other amounts.	(1) Notice ● (1) Proposed Regulation ◒ (1) Final Regulation ○	LB&I
13307	Denial of deduction for settlements subject to nondisclosure agreements paid in connection with sexual harassment or sexual abuse.	(1) Frequently Asked Question ●	SB/SE

Section Number	Provision Title	Implementation Status of Planned Information and Guidance[a]	Responsible Business Unit
13308	Repeal of deduction for local lobbying expenses.	No guidance planned	LB&I
13309	Recharacterization of certain gains in the case of partnership profits interests held in connection with performance of investment services.	(1) Notice ● (1) Proposed Regulation ◒ (1) Final Regulation ○	LB&I
13310	Prohibition on cash, gift cards, and other non-tangible personal property as employee achievement awards.	No guidance planned	SB/SE
13312	Certain contributions by governmental entities not treated as contributions to capital.	No guidance planned	LB&I
13313	Repeal of rollover of publicly traded securities gain into specialized small business investment companies.	No guidance planned	LB&I
13314	Certain self-created property not treated as a capital asset.	No guidance planned	LB&I
13401	Modification of orphan drug credit.	No guidance planned	LB&I
13402	Rehabilitation credit limited to certified historic structures.	No guidance planned	SB/SE
13403	Employer credit for paid family and medical leave.	(1) Notice ●	SB/SE
13501	Treatment of gain or loss of foreign persons from sale or exchange of interests in partnerships engaged in trade or business within the United States.	(2) Notices ●● (2) Proposed Regulations ●● (2) Final Regulations ◒◒	LB&I
13502	Modify definition of substantial built-in loss in the case of transfer of partnership interest.	No guidance planned	LB&I
13503	Charitable contributions and foreign taxes taken into account in determining limitation on allowance of partner's share of loss.	(1) Proposed Regulation ○ (1) Final Regulation ○	LB&I
13504	Repeal of technical termination of partnerships.	(1) Proposed Regulation ○ (1) Final Regulation ○	LB&I
13511	Net operating losses of life insurance companies.	(1) Proposed Regulation ○ (1) Final Regulation ○	LB&I
13512	Repeal of small life insurance company deduction.	No guidance planned	LB&I
13513	Adjustment for change in computing reserves.	(1) Revenue Procedure ●	LB&I
13514	Repeal of special rule for distributions to shareholders from pre-1984 policyholders surplus account.	No guidance planned	LB&I

Section Number	Provision Title	Implementation Status of Planned Information and Guidance[a]	Responsible Business Unit
13515	Modification of proration rules for property and casualty insurance companies.	No guidance planned	LB&I
13516	Repeal of special estimated tax payments	No guidance planned	LB&I
13517	Computation of life insurance tax reserves.	(1) Revenue Procedure ● (1) Proposed Regulation ◒ (1) Final Regulation ○	LB&I
13518	Modification of rules for life insurance proration for purposes of determining the dividends received deduction.	No guidance planned	LB&I
13519	Capitalization of certain policy acquisition expenses.	(1) Revenue Procedure ●	LB&I
13520	Tax reporting for life settlement transactions.	(1) Notice ● (1) Proposed Regulation ● (1) Final Regulation ◒	LB&I
13521	Clarification of tax basis of life insurance contracts.	(1) Revenue Ruling ◒	LB&I
13522	Exception to transfer for valuable consideration rules.	(1) Notice ● (1) Proposed Regulation ● (1) Final Regulation ◒	LB&I
13523	Modification of discounting rules for property and casualty insurance companies.	(2) Revenue Procedures ●● (1) Proposed Regulation ● (1) Final Regulation ●	LB&I
13531	Limitation on deduction for FDIC premiums.	No guidance planned	LB&I
13541	Expansion of qualifying beneficiaries of an electing small business trust.	(1) Proposed Regulation ● (1) Final Regulation ●	SB/SE
13542	Charitable contribution deduction for electing small business trusts.	No guidance planned	SB/SE
13543	Modification of treatment of S corporation conversions to C corporations.	(1) Revenue Procedure ● (1) Revenue Ruling ● (1) Proposed Regulation ◒	SB/SE
13601	Modification of limitation on excessive employee remuneration.	(1) Notice ● (1) Proposed Regulation ◒ (1) Final Regulation ○	LB&I
13603	Treatment of qualified equity grants.	(1) Notice ●	LB&I
13604	Increase in excise tax rate for stock compensation of insiders in expatriated corporations.	No guidance planned	LB&I
13801	Production period for beer, wine, and distilled spirits.	No guidance planned	LB&I
13821	Modification of tax treatment of Alaska native corporations and settlement trusts.	No guidance planned	SB/SE

Section Number	Provision Title	Implementation Status of Planned Information and Guidance[a]	Responsible Business Unit
13822	Amounts paid for aircraft management services.	No guidance planned	SB/SE
13823	Opportunity zones.	(2) Notices ●● (1) Frequently Asked Questions ● (1) Revenue Procedure ● (1) Revenue Ruling ● (3) Proposed Regulations●●◒ (2) Final Regulations ◒○	SB/SE
14101	Deduction for foreign-source portion of dividends received by domestic corporations from specified 10-percent owned foreign corporations.	(2) Proposed Regulations ●◒ (3) Final Regulations ●◒○	LB&I
14102	Special rules relating to sales or transfers involving specified 10-percent owned foreign corporations.	(2) Proposed Regulations ●◒ (3) Final Regulations ●◒○	LB&I
14103	Treatment of deferred foreign income upon transition to participation exemption system of taxation (Repatriation tax).	(4) Notices ●●●● (2) Revenue Procedures ●● (1) Proposed Regulation ● (1) Final Regulation ●	LB&I
14201	Current year inclusion of global intangible low-taxed income by United States shareholders.	(1) Notice ● (1) Revenue Procedure ● (2) Proposed Regulation ●● (2) Final Regulations ●◒	LB&I
14202	Deduction for foreign-derived intangible income and global intangible low-taxed income.	(1) Proposed Regulation ● (1) Final Regulation ◒	LB&I
14211	Elimination of inclusion of foreign base company oil related income.	No guidance planned	LB&I
14212	Repeal of inclusion based on withdrawal of previously excluded subpart F income from qualified investment.	No guidance planned	LB&I
14213	Modification of stock attribution rules for determining status as a controlled foreign corporation.	(1) Revenue Procedure ◒ (1) Proposed Regulation ◒ (1) Final Regulation ○	LB&I
14214	Modification of definition of United States shareholder.	(1) Revenue Procedure ◒ (1) Proposed Regulation ◒ (1) Final Regulation ○	LB&I
14215	Elimination of requirement that corporation must be controlled for 30 days before subpart F inclusions apply.	No guidance planned	LB&I
14221	Limitations on income shifting through intangible property transfers.	(1) Proposed Regulation ◒ (1) Final Regulation ○	LB&I

Section Number	Provision Title	Implementation Status of Planned Information and Guidance[a]	Responsible Business Unit
14222	Certain related party amounts paid or accrued in hybrid transactions or with hybrid entities.	(2) Proposed Regulations ●◒ (2) Final Regulations ◒○	LB&I
14223	Shareholders of surrogate foreign corporations not eligible for reduced rate on dividends.	No guidance planned	LB&I
14301	Repeal of section 902 indirect foreign tax credits; determination of section 960 credit on current year basis.	(2) Proposed Regulations ●◒ (3) Final Regulations ◒◒○	LB&I
14302	Separate foreign tax credit limitation basket for foreign branch income.	(2) Proposed Regulations ●◒ (3) Final Regulations ◒◒○	LB&I
14303	Source of income from sales of inventory determined solely on basis of production activities.	(3) Proposed Regulations ●◒◒ (4) Final Regulations ◒◒○○	LB&I
14304	Election to increase percentage of domestic taxable income offset by overall domestic loss treated as foreign source.	(2) Proposed Regulations ●◒ (3) Final Regulations ◒◒○	LB&I
14401	Base erosion and anti-abuse tax.	(2) Proposed Regulations ●◒ (2) Final Regulations ◒○	LB&I
14501	Restriction on insurance business exception to passive foreign investment company rules.	(1) Proposed Regulation ● (1) Final Regulation ◒	LB&I
14502	Repeal of fair market value method of interest expense apportionment.	No guidance planned	LB&I

Legend:
○ drafting process not started
◒ drafting in-progress
● guidance complete and released for public viewing

Source: Internal Revenue Service (IRS) documentation and Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017). | GAO-20-103

Note: Pubic Law 115-97 is commonly known as the Tax Cuts and Jobs Act of 2017. See Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

[a]Some guidance met the needs of multiple provisions. For example, the proposed regulations for Sections 13520 and 13522 are the same.

Appendix III: Office of Management and Budget Review of Tax Cuts and Jobs Act of 2017

We found that, as of September 30, 2019, on average, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) completed its review of 25 Tax Cuts and Jobs Act of 2017 (TCJA) regulations in about 38 calendar days, as shown in tables 5 and 6. While according to the Memorandum of Agreement between OMB and the Department of Treasury, OIRA has 45 calendar days to review tax regulations, OIRA agreed to consider an expedited review of 10 business days for TCJA regulations. As of September 30, 2019, OIRA agreed to review three regulations in an expedited fashion and OIRA completed two of these reviews in 10 business days and the third in 12 business days.

Table 5: List of Business and International Tax Cuts and Jobs Act of 2017 (TCJA) Regulations OIRA Reviewed as of September 30, 2019

Submitted to OIRA[a]	OIRA concluded review	Regulations	Final or proposed?	Expedited?	Business days	Total days
7/13/2018	7/26/2018	Guidance Regarding the Transition Tax Under Section 965 and Related Provisions	Proposed	Yes	9	13
7/23/2018	8/7/2018	Qualified Business Income Deduction	Proposed	Yes	11	15
8/22/2018	9/7/2018	Guidance Related to Section 951A (Global Intangible Low-Taxed Income)	Proposed	No	11	16
9/12/2018	10/17/2018	Investing in Qualified Opportunity Funds	Proposed	No	24	35
10/25/2018	11/21/2018	Limitation on Deduction for Business Interest Expense	Proposed	No	18	27
11/6/2018	12/13/2018	Base Erosion and Anti-Abuse Tax	Proposed	No	25	37
11/8/2018	11/23/2018	Guidance Related to the Foreign Tax Credit, Including Guidance Implementing Changes Made by the Tax Cuts and Jobs Act	Proposed	Yes	9	15
11/13/2018	12/17/2018	Rules Regarding Certain Hybrid Arrangements	Proposed	No	23	34
12/4/2018	12/11/2018	Gain or Loss of Foreign Persons From Sale or Exchange of Certain Partnership Interests	Proposed	No	5	7
12/6/2018	1/14/2019[b]	Regulations Regarding the Transition Tax Under Section 965 and Related Provisions*	Final	No	25	39
12/13/2018	1/17/2019[b]	Guidance under Sec. 199A (RIC - REIT)*	Proposed	No	23	35
12/14/2018	1/17/2019[b]	Qualified Business Income Deduction*	Final	No	22	34
12/14/2018	2/21/2019[b]	Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income*	Proposed	No	45	69
3/12/2019	4/16/2019	Qualified Opportunity Funds	Proposed	No	25	35
4/2/2019	5/17/2019	Section 199A Rules for Cooperatives and Their Patrons	Proposed	No	33	45

Submitted to OIRA[a]	OIRA concluded review	Regulations	Final or proposed?	Expedited?	Business days	Total days
4/4/2019	5/22/2019	Guidance on Passive Foreign Investment Companies	Proposed	No	34	48
4/11/2019	7/22/2019	Regulations Under Section 382(h) Related to Built-In Gain and Loss	Proposed	No	70	102
4/12/2019	8/20/2019	Advance Payments for Goods, Services, and Other Items	Proposed	No	90	130
5/14/2019	6/4/2019	Limitation on Deduction for Dividends Received From Certain Foreign Corporations and Amounts Eligible for Section 954 Look-Through Exception	Final	No	14	21
5/16/2019	6/6/2019	Guidance under Section 958 (Rules for Determining Stock Ownership) and Section 951A (Global Intangible Low-Taxed Income)	Proposed	No	14	21
5/16/2019	6/6/2019	Guidance Related to Section 951A (Global Intangible Low-Taxed Income) and Certain Guidance Related to Foreign Tax Credits	Final	No	14	21
5/29/2019	6/4/2019	Limitation on Deduction for Dividends Received From Certain Foreign Corporations and Amounts Eligible for Section 954 Look-Through Exception	Proposed	No	4	6
6/17/2019	8/20/2019	Taxable Year of Income Inclusion under an Accrual Method of Accounting	Proposed	No	45	64
7/25/2019	9/6/2019	Additional First Year Depreciation Deduction	Proposed	No	30	43
7/25/2019	9/9/2019	Additional First Year Depreciation Deduction	Final	No	31	46

Source: GAO analysis of Office of Information and Regulatory Affairs (OIRA) and Internal Revenue Service information. | GAO-20-103

Note: Pubic Law 115-97 is commonly known as the Tax Cuts and Jobs Act of 2017. See Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

[a]This is the date that OIRA's formal review began. According to a Department of Treasury official, Treasury provided OIRA a draft regulation for review and OIRA sent the draft back to Treasury to be updated prior to beginning its official review.

[b]These regulations' review period was during the partial lapse in appropriations in December 2018 through January 2019, which affected OIRA's ability to review them.

Table 6: Average Length of Time of OIRA Review of Business and International Tax Cuts and Jobs Act of 2017 (TCJA) Regulations as of September 30, 2019

		Number of regulations	Average length of time for review	
			Business days	Calendar days
Proposed regulations	Non-expedited	17	31	44
	Expedited	3	10	14
	All	20	27	40
Final regulations	Non-expedited	5	21	32
	Expedited	0	N/A	N/A
	All	5	21	32
All regulations	Non-expedited	22	28	42
	Expedited	3	10	14
	All	25	26	38

Source: GAO analysis of Office of Information and Regulatory Affairs (OIRA) and Internal Revenue Service information. | GAO-20-103

Notes: Pubic Law 115-97 is commonly known as the Tax Cuts and Jobs Act of 2017. See Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017). This table includes four regulations that were sent to OIRA prior to the partial lapse in appropriations in December 2018 that lasted through January 2019, which affected OIRA's ability to review these regulations timely.

Appendix IV: Comments from the Internal Revenue Service

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

DEPUTY COMMISSIONER

January 28, 2020

Ms. Jessica Lucas-Judy
Director, Tax Issues
Strategic Issues
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Ms. Lucas-Judy:

Thank you for the opportunity to review and provide comments on the draft report entitled *TAX CUTS AND JOBS ACT: Considerable Progress Made Implementing Business Provisions, but IRS Faces Administrative and Compliance Challenges* (GA0-20-103). We have requested clarifications in the draft report regarding our role in the development of Tax Cuts and Jobs Act (TCJA) regulations as well as the removal of select statements that may not promote effective tax administration. We thank you in advance for your consideration of our requests.

The most visible taxpayer service we provide each year is the delivery of a smooth and reliable tax filing season. The 2019 filing season was a great success for the IRS, as we overcame challenges that included the implementation of the TCJA and the government shutdown just as we were in the final stages of preparation for the filing season.

As noted in the report, the TCJA was the most sweeping set of tax law changes in more than 30 years. Our top priority was to ensure our customers had the information they needed, along with the support of knowledgeable IRS employees to help them fulfill tax obligations with the least possible burden. We appreciate your noting that the tax practitioners GAO spoke with generally had favorable opinions of the speed and quality of the guidance provided, and appreciate your acknowledgment that our tax reform implementation team was designated by a national tax publication as “Person of the Year” for 2018 for their efforts.

The IRS’s efforts to implement the TCJA extended into many different areas that affected taxpayers in many ways. These efforts included:

- Creating or revising more than 500 IRS forms and publications;
- Reprogramming IRS information technology systems with special focus on return processing, payment, and fraud detection systems;

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- Training IRS employees so they could assist the public in understanding how the tax law changes applied to them;
- Providing education and outreach to taxpayers and tax professionals to increase their understanding of the various tax changes, including a year-round effort encouraging taxpayers to conduct a Paycheck Checkup to review their tax withholding; and
- Working with the Department of the Treasury to provide the legal guidance that taxpayers and tax professionals need to understand and navigate the TCJA.

The IRS took a novel approach to tax reform implementation that was reflective of the significant tax processing changes, condensed timelines, and unique challenges the TCJA presented. We agree enhanced collaboration with our Counsel colleagues was particularly helpful in implementing complex TCJA provisions.

The TCJA necessitated immediate revisions to IRS forms and publications for the 2019 filing season. Computer programming requirements were issued for approximately 150 different forms affected by the TCJA. Collectively, these changes and updates affected 128 information technology systems. Due to the magnitude of the required changes, we were unable to ensure all TCJA-related transcription requests were completed for the 2019 filing season. As you note, the Large Business and International (LB&I) business operating division was able to have a limited amount of TCJA-related return data retroactively transcribed. LB&I serves approximately 210,000 customers that include corporations and partnerships with assets of $10 million or more. In comparison, the Small Business/Self-Employed (SB/SE) business operating division serves more than 50 million customers that include self-employed individuals and small businesses. Retroactive transcription with respect to SB/SE's customers would require substantial resources and pose significant opportunity costs. Moreover, as noted in your report, regardless of the format in which data is provided to the IRS, we are able to use it in our compliance activities.

I appreciate the discussion of the challenges associated with ensuring compliance with TCJA provisions. We have taken and will continue to take targeted steps to ensure we have the data necessary to efficiently and effectively focus our TCJA-related compliance efforts.

Thank you for recognizing our collective efforts and successes and providing these recommendations. The Treasury Assistant Secretary for Tax Policy will respond to the draft report in a separate letter. Responses to your specific recommendations are enclosed. If you have any questions, please contact me or Scott Irick, Director, Examination, Small Business/Self-Employed Division.

Sincerely,

Sunita Lough

Sunita Lough
Deputy Commissioner
for Services and Enforcement

Enclosure

Enclosure

GAO Recommendations and IRS Responses to GAO Draft Report TAX CUTS AND JOBS ACT: Considerable Progress Made Implementing Business Provisions, but IRS Faces Administrative and Compliance Challenges (GAO-20-103)

Recommendation 1: The Chief Counsel of the Internal Revenue Service, in coordination with appropriate offices, should identify and document parameters and procedures for applying enhanced collaborative approaches to regulation and other guidance development with IRS Business Operating Divisions.

Comment:
We disagree. We believe the Chief Counsel Directives Manual (CCDM) section 32.1.2.6.2.2 provides sufficient guidance and flexibility on when such enhanced collaboration with the IRS business operation divisions is appropriate. While enhanced collaboration is appropriate in the context of complex changes to the tax code, as was done with TCJA, the Affordable Care Act, the partnership rules under the Bipartisan Budget Act of 2015, and the Foreign Account Tax Compliance Act, more routine changes in the law may not need that level of collaboration. Establishing specific criteria for enhanced collaboration is likely to reduce the flexibility and independent judgment that presently exists.

Recommendation 2: The Commissioner of Internal Revenue should develop a process to accurately and thoroughly capture implementation status of ongoing projects in accordance with *Standards for Internal Control in the Federal Government*.

Comment:
We disagree that a new process is needed. We have used our existing process to successfully implement new legislation year after year. While we acknowledge there were some inconsistencies once the remaining implementation actions were transferred to our operating divisions, the inconsistencies did not harm or slow down the overall implementation of any provision.

Recommendation 3: The Commissioner of Small Business/Self-Employed should coordinate with appropriate IRS divisions or offices to identify the costs and benefits of retroactively transcribing taxpayer data resulting from TCJA.

Comment:
We disagree. Retroactive transcription is only possible using manual processes. TCJA affects millions of returns and would require the IRS to individually view each return and manually enter the desired data fields into an Excel worksheet or an Access database. Not only is this an extremely time intensive activity with significant opportunity costs, but it also prevents the IRS from executing any business rules or automated processes as

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the data would not be contained within our primary compliance data systems. The benefits are also currently not quantifiable. The degree of non-compliance will remain an unknown variable until returns with the new TCJA provisions are audited and closed case audit results are secured.

Recommendation 4: Based on the costs and benefits identified in recommendation 3, the Commissioner of Small Business/Self-Employed should determine which TCJA provisions' data should be converted into a more useful electronic format for compliance and enforcement purposes and work with the appropriate offices to obtain the transcribed data, as appropriate.

Comment:
We disagree based on the response for recommendation 3.

Recommendation 5: The Assistant Secretary of Tax Policy should update Treasury's internal guidance to ensure that Treasury's regulatory impact analyses include examination of the distributional effects of revenue changes when regulations influence tax liability.

Comment:
Treasury will be responding separately.

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Jessica Lucas-Judy, (202) 512-9110 or LucasJudyJ@gao.gov

Staff Acknowledgments

In addition to the contact named above, Brian James (Assistant Director), Dawn Bidne (Analyst-in-Charge), Michael Bechetti, Justin Bolivar, Tara Carter, Jacqueline Chapin, Nina Crocker, Robert Gebhart, Thomas Gilbert, Travis Hill, Naomi Joswiak, Mark Kehoe, Shelbe Klebs, Daniel Mahoney, Regina Morrison, Benjamin Moser, Sabine Paul, Bradley Roach, Erin Saunders-Rath, Jerome Sandau, Andrew J. Stephens, Rachel Stoiko, Jennifer Stratton, Peter Verchinski, and Sarah Wilson made key contributions to this report.

Related GAO Products

2019 Tax Filing: IRS Successfully Implemented Tax Law Changes but Needs to Improve Service for Taxpayers with Limited-English Proficiency. GAO-20-55. Washington, D.C.: January 15, 2020.

Tax Gap: Multiple Strategies Are Needed to Reduce Noncompliance, GAO-19-558T. Washington, D.C.: May 9, 2019.

Internal Revenue Service: Strategic Human Capital Management is Needed to Address Serious Risks to IRS's Mission. GAO-19-176. Washington, D.C.: March 26, 2019.

2018 Tax Filing: IRS Managed Processing Challenges and Enhanced Its Management of Tax Law Changes. GAO-18-471. Washington, D.C.: September 10, 2018.

Federal Regulations: Key Considerations for Agency Design and Enforcement Decisions. GAO-18-22. Washington, D.C.: October 19, 2017.

Regulatory Guidance Processes: Treasury and OMB Need to Reevaluate Long-standing Exemptions of Tax Regulations and Guidance. GAO-16-720. Washington, D.C.: September 6, 2016.

Federal Rulemaking: Agencies Included Key Elements of Cost-Benefit Analysis, but Explanations of Regulations' Significance Could Be More Transparent [Reissued on September 12, 2014]. GAO-14-714. Washington, D.C.: September 11, 2014.

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