

# Department of the Treasury

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# Make Tax Regulations Subject to Meaningful Review

## RECOMMENDATION

Internal Revenue Service (IRS) and Treasury Department tax regulations should be subject to review by the Office of Management and Budget's (OMB's) Office of Information and Regulatory Analysis (OIRA) to the same extent as other agency regulations.

## RATIONALE

Under Executive Order 12866 (relating to Regulatory Planning and Review, as amended) and various other OIRA guidance, agency rules are subject to cost-benefit analysis and other review.

IRS regulations have been largely exempt from review by OIRA since an April 29, 1983, Memorandum of Understanding (MOU) between the Treasury and the OMB regarding Implementation of Executive Order 12291. This MOU was reconfirmed by the two agencies in 1993 with additional exemptions in an addendum. IRS rules are deemed "interpretive" and

largely exempt from OIRA review. Few other agencies enjoy such an exemption.

IRS rules impose an estimated \$400 billion annually in costs on the economy, which is more than 2 percent of gross domestic product. The IRS and Treasury have significant discretion in how they draft tax rules. Serious review of existing and proposed regulation should be undertaken to reduce compliance costs. The MOU should be terminated, and OIRA should commence review of IRS and Treasury Department tax regulations.

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## ADDITIONAL READING

- Scott A. Hodge, "The Compliance Costs of IRS Regulations," Tax Foundation *Fiscal Fact* No. 512, June 2016.

# Make the Internal Revenue Service Publicly Accountable

## RECOMMENDATION

Increase the number of presidentially appointed Senate-confirmed positions in the IRS to make the agency more accountable to the public.

## RATIONALE

Of the roughly 78,000 IRS employees (in 2016), only two are political appointees—the Commissioner and the Chief Counsel. They are appointed by the President with the advice and consent of the Senate. In addition, the independent Treasury Inspector General for Tax Administration is a presidential appointee subject to Senate confirmation.

It is unrealistic to expect two people to exercise meaningful administrative and policy control over an agency the size of the IRS. The bureaucracy has proven it is unaccountable and unresponsive to the public. An agency as enormous as the IRS, with a function as important and subject to abuse

as tax collection, has to be subject to greater public accountability.

At the very least, the Deputy Commissioner for Services and Enforcement and the

Deputy Commissioner for Operations Support should be presidential appointees subject to Senate confirmation. In addition, the Division Commissioners should probably be presidential appointees subject to Senate confirmation. Those divisions are the Wage and Investment Division, the Large Business and International Division, the Small Business/Self Employed Division, and the Tax Exempt and Government Entities Division.

## ADDITIONAL READING

- David R. Burton, “IRS Politicization Is Inappropriate in a Democratic Republic,” *The Daily Signal*, May 12, 2014.
- Hans A. von Spakovsky, “The IRS Just Admitted They Could Resume Targeting Conservatives,” *Conservative Review*, August 9, 2016.
- Hans A. von Spakovsky, “Protecting the First Amendment from the IRS,” Heritage Foundation *Legal Memorandum* No. 104, October 2, 2013.

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# Make FinCEN Regulations Subject to Cost-Benefit Analysis

## RECOMMENDATION

Financial Crimes Enforcement Network (FinCEN) regulations should be subject to meaningful cost-benefit analysis.

## RATIONALE

The current anti-money laundering/know your customer (AML/KYC) regime administered by FinCEN costs the American economy an estimated \$4.8 billion to \$8 billion annually. Yet, this AML/KYC system results in fewer than 700 convictions annually, a large proportion of which are simply additional counts against persons charged with other predicate crimes. Thus, each conviction costs at least \$7 million, and potentially much more. Each year the

rules grow more onerous and affect more people and more businesses. Yet FinCEN has never conducted a meaningful cost-benefit analysis of these rules, nor sought less-costly ways of achieving their objectives. Congress should require FinCEN to do so. In addition, outside analysts, such as from the Government Accountability Office or OIRA should review FinCEN's analysis.

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## ADDITIONAL READING

- David R. Burton and Norbert J. Michel, "Financial Privacy in a Free Society," Heritage Foundation *Backgrounder* No. 3157, September 23, 2016.