



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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

B-335536

August 24, 2023

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

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

Subject: *Department of the Treasury, Internal Revenue Service: Additional Guidance on Low-Income Communities Bonus Credit Program*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Internal Revenue Service (IRS) entitled "Additional Guidance on Low-Income Communities Bonus Credit Program" (RIN: 1545-BQ81). We received the rule on August 17, 2023. It was published in the *Federal Register* as final regulations on August 15, 2023. 88 Fed. Reg. 55506. The effective date is October 16, 2023.

The final rule concerns the application of the Low-Income Communities Bonus Credit Program for the energy investment credit established pursuant to the Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818 (Aug. 16, 2022). IRS states that the final rule provides definitions and requirements that are applicable to this program. IRS further states that the final rule affects applicants seeking allocations of the environmental justice solar and wind capacity limitation to increase the amount of the energy investment credit for which such applicants would otherwise be eligible once the facility is placed in service.

Enclosed is our assessment of IRS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Oluwafunmilayo A. Taylor
Chief, Publications and Regulations Branch
Internal Revenue Service
Department of the Treasury

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE
ENTITLED
“ADDITIONAL GUIDANCE ON LOW-INCOME COMMUNITIES BONUS CREDIT PROGRAM”
(RIN: 1545-BQ81)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS) stated that pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, IRS states that a regulatory impact assessment is not required for this final rule.

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

IRS states that it has not determined whether the final rule will have a significant economic impact on a substantial number of small entities. IRS further stated that this determination requires further study, and that it has provided a final regulatory flexibility analysis in the final rule. In the referenced analysis, IRS addressed the need for and objectives of the final rule, significant issues raised by public comments, the small entities affected by the final rule, the impact of the final rule, steps taken to minimize impacts on small entities, and alternatives considered to the final rule.

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

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

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

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

On June 1, 2023, IRS published a proposed rule. 88 Fed. Reg. 35791. IRS responded to comments in the final rule.

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

IRS states that the final rule contains recordkeeping requirements that, for PRA purposes, are already approved by the Office of Management and Budget (OMB) under OMB Control Number 1545-0123 for business filers, OMB Control Number 1545-0074 for individual filers, and OMB Control Number 1545-0047 for tax-exempt organizations.

IRS further states that the final rule contains information collection requirements that will be submitted to OMB under OMB Control Number 1545-2308 for review and approval.

IRS estimates that the information collection requirements in the final rule will affect 70,000 respondents and impose a total burden of 210,000 hours.

Statutory authorization for the rule

IRS promulgated this final rule pursuant to sections 48 and 7805 of title 26, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

IRS states that pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, IRS states that a regulatory impact assessment is not required.

Executive Order No. 13132 (Federalism)

IRS states that the final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.