



TaxNewsFlash

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Legislative update: House passes regulatory reform bill, “Chevron doctrine” repeal

The U.S. House of Representatives yesterday evening, January 11, 2016, approved (with amendments) H.R. 5, the “Regulatory Accountability Act of 2017.” The bill was passed by a vote of 238 to 183. Five Democrats supported the bill.

Title II of H.R. 5 is intended to repeal the so-called “Chevron doctrine.” If enacted, H.R. 5 could have implications for tax regulations. Read text of [H.R. 5](#) [PDF 362 KB]

Sponsor’s statement about the bill

Rep. Bob Goodlatte (R-VA) introduced H.R. 5, along with several other House Republicans. According to a [statement](#) issued by Rep. Goodlatte, H.R. 5 brings together six separate regulatory reform bills as passed by the House in previous Congresses:

- To require agencies to choose the lowest-cost rulemaking alternative that meets statutory objectives, permitting costlier rules only when cost-justified and needed to protect public health, safety, or welfare
- Require additional opportunity for public input and vetting of critical information—especially for rules with the potential to have significant economic impact
- Repeal the “Chevron doctrine” and “Auer doctrine” to end judicial deference to certain agency statutory and regulatory interpretations
- Require agencies to account for the direct, indirect, and cumulative impacts of new regulations on small businesses
- Postpone effective dates of certain significant rules from taking effect until courts can resolve timely filed litigation challenging their promulgation
- Require agencies to publish online, timely information about regulations in development and their expected nature, cost, and timing
- Publish plain-language, online summaries of new proposed rules for public review

Amendments passed by House

The following amendments were approved by the House and incorporated into the bill:

- An amendment to revise the section of the bill dealing with the repeal of the “Chevron doctrine.” The amendment generally provides that, if a reviewing court determines that a statutory or regulatory provision relevant to its decision contains a gap or ambiguity, the court will not interpret that gap or ambiguity as an implicit delegation of legislative rule-making authority to the regulatory agency and will not rely on that gap or ambiguity as a justification for interpreting agency authority expansively or for deferring to the agency’s interpretation on the question of law. Read the [text](#) of this amendment.
- An amendment to require an agency to include an economic assessment or a summary of it when an agency certifies that a proposed rule will not have a “significant economic impact on a substantial number of small entities” under the Regulatory Flexibility Act.
- An amendment to provide agency accountability of major rules by requiring retrospective review and report.
- An amendment to allow for sufficient time (at least 90 days) for affected entities to take steps to comply with issued guidance.
- An amendment to prohibit agencies from communicating with the public in order to generate support or opposition to a proposed rule.
- An amendment to require federal agencies to report on influential scientific information and associated peer reviews disseminated or to be disseminated in a rule-making proceeding.

Repeal of “Chevron doctrine”

In addition to the change to the current standards proposed by the amendment (noted above) regarding how a court interprets a perceived gap or ambiguity in a relevant statute or regulation, the bill would specifically instruct courts to not defer to certain specific agency action, including determinations made in the adoption of an “interim rule,” and agency “guidance.” The term “guidance” is newly defined in section 102 of the bill to mean “an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.” The bill would also incorporate other relevant provisions found within the bill into the rules provided by 5 U.S.C. section 706, including the proposed expansions to the Information Quality Act.

KPMG observation

If enacted, H.R. 5 could have a significant impact on the analysis of some tax issues in situations in which the language of the Code is unclear. Based on a preliminary analysis of the statutory language of H.R. 5, however, it is not clear whether the bill (if enacted) would have as broad an impact as apparently is intended toward fully repealing the “Chevron doctrine,” and as to what extent it would affect the analysis of Treasury regulations and other Treasury and IRS guidance. For instance, revenue procedures and revenue rulings appear to fall within the proposed definition of

“guidance,” yet it is not clear whether temporary regulations promulgated under section 7805 of the Code are considered “interim rules.” Further analysis of the bill’s potential implications on the analysis of tax issues would be needed if the bill were to move forward in the legislative process.

What’s next?

In order for H.R. 5 to become law, the Senate would need to pass identical legislation (or the House and Senate would have to pass the same bill, and the president would need to sign (or not successfully veto) the legislation. The Senate has not scheduled action on H.R. 5, and it is not clear if or when it might consider the bill. If such legislation were considered in the Senate, it is possible that it could be subjected to a filibuster and could require the support of 60 Senators to be approved.

For more information, contact a member of KPMG’s Washington National Tax (WNT) Federal Legislative and Regulatory Services group:

John Gimigliano | +1 (202) 533-4022 | jgimigliano@kpmg.com

Carol Kulish | +1 (202) 533-5829 | ckulish@kpmg.com

Tom Stout | +1 (202) 533-4148 | tstoutjr@kpmg.com

Jennifer Bonar Gray | +1 (202) 533-3489 | jennifergray@kpmg.com

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