

IRS Has Decreased Requests for Expedited Federal Register Review

by Andrew Velarde

The IRS and Treasury are no longer routinely asking the *Federal Register* for expedited review immediately before the publication of regs, according to one former official.

"There's been a turn, generally, in the [IRS] requesting the expedited service," Kevin M. Jacobs of Alvarez & Marsal Taxand LLC said.

Jacobs, who until recently was branch 4 senior technician reviewer with the IRS Office of Associate Chief Counsel (Corporate), spoke at the annual International Fiscal Association USA branch meeting in Boston February 28.

The *Federal Register* review is separate from the review of regs by the Office of Management and Budget's Office of Information and Regulatory Affairs, which comes before and also presents the option for expedited review.

Jacobs's recent government experience contrasts with that of Danielle Rolfes of KPMG, who worked as international tax counsel under the Obama administration, when Treasury "pretty routinely" requested expedited review by the *Federal Register*.

Generally the regs now must go through 'a justification to substantiate the request,' which leads to another layer of review, Jacobs said.

"The regs would appear within two days after we sent it over," Rolfes said, contrasting that with the weeks it sometimes takes for publication after a package is sent to the *Federal Register* today. She said that during her time in government, when an expedited review for Foreign Account Tax Compliance Act regs was determined to take three weeks before publication after submission to the *Federal Register*, Treasury wondered, "What on earth has happened?"

Given the urgent calls from practitioners for guidance, especially in light of the Tax Cuts and Jobs Act, Rolfes questioned why the IRS and Treasury are no longer asking for expedited service.

But according to Jacobs, generally the regs now must go through "a justification . . . to substantiate the request," which leads to another layer of review. He added that lately the *Federal Register* review, which includes analysis of less-substantive requirements such as spacing and formatting, has been much more proactive in providing comments beyond that.

In light of the section 163(j) proposed regs still being caught up at OIRA, even though the final regs were cleared on January 31, and the government's wish to release the two together, Jacobs said it is expected that the anti-hybrid rules will be published first. Proposed and final regs on hybrid mismatches cleared OIRA on February 26.

Pressed after the panel for more details about the timing of the shift in policy for expedited review, Jacobs did not elaborate further. ■