

**Written Testimony of Lonnie Gary, EA, USTCP
Chairman, Government Relations Committee
National Association of Enrolled Agents
before the House Ways and Means Committee
Subcommittee on Oversight
July 28, 2011**

On behalf of the National Association of Enrolled Agents (NAEA) and 43,000 enrolled agents, I would like to thank the Chairman and members of the Subcommittee for inviting me to testify on the Internal Revenue Service's effort to provide new standards for and oversight of unlicensed paid return preparers. It is a complicated undertaking, but if executed correctly will do much to protect taxpayers from unscrupulous and incompetent preparers – of which there are far too many.

NAEA has for years advocated for return preparer oversight. With one major exception we support the bulk of the agency's decisions to date. In our testimony today, I will highlight what we believe the agency has done right, where we see potential problems, and finally, two issues of great importance – promotion and enforcement – that have yet to progress sufficiently for us to judge adequately.

Progress to Date

Enrolled agents have for more than a decade supported efforts to bring order to the chaos all too easily found in the return preparer community. More recently, we supported Commissioner Shulman in his initial efforts and applauded his conclusions in his January 2010 [Return Preparer Review](#) (Pub. 4832), including elements unpopular with many in the industry, such as a requirement both for mandatory competency testing and for continuing professional education for all non-legacy Circular 230 practitioners¹.

Clearly the agency has kept its eye on the prize--protecting taxpayers--by adopting a variety of taxpayer safeguards:

- Establishing an agency process for disciplining (and removing from practice) preparers who fall below competency and ethical standards;
- Providing a new regulatory framework that uses existing statutory authority for regulating individuals who practice (i.e., Circular 230);
- Subjecting all paid preparers to a uniform standard of ethics, Circular 230;

¹ Throughout this document, we use the term "legacy Circular 230 practitioner" to refer to enrolled agents, attorneys, and certified public accountants, the full-service tax practitioners also governed by prior versions of Circular 230.

- Placing the Office of Professional Responsibility as the chief cop over preparer standards;
- Recognizing significant new regulatory requirements for the already regulated legacy Circular 230 practitioners are unnecessary; and,
- Using the existing penalty structure for failure to sign a return and/or failure to provide a valid PTIN.

Finally, IRS relies on registration fees to cover all costs for administration and enforcement of the requirements it has established for all paid preparers. Enrolled agents believe this step was essential for ensuring adequate resources for full implementation of the program.

Provide Marketplace Clarity and Protect All Taxpayers

Our main area of concern, however, is that the newly licensed will be tested only on a basic individual income tax return (Form 1040) but be allowed to prepare ALL tax returns. This approach is troublesome for several reasons. First, it allows those who have taken a basic test to market themselves as licensed to meet all tax preparation needs. Second, it protects only a portion of the general taxpaying public and, frankly, we don't understand why IRS insists on protecting only some taxpayers, but not those with the most complex returns.

Enrolled agents believe that taxpayers and the tax community are better served by the basic proposition that tax returns should only be done by a preparer who has shown competency – through testing – on that particular return. To that end, we suggest the agency create a tiered credentialing, with a limited credential (registered tax return preparer) and unlimited credentials/license (enrolled agents, CPAs and attorneys).

Under this tiered system, legacy Circular 230 practitioners would be permitted to prepare all tax returns (e.g., individual, small businesses, partnerships, estate tax and excise taxes) as under the current regulatory system, and granted unlimited practice for both preparation and representation before IRS. The newly credentialed would demonstrate competency on a basic Form 1040 for individuals by passing an augmented first part of the already existing three-part special enrollment exam and then be granted authority to prepare the basic return (and limited representation authority as under current regulations). The IRS could enforce this regime simply through computer matching of PTINs to type of tax return.

We believe that without a tiered approach to credentialing, small business taxpayers in particular will suffer unnecessary penalties and interest payments as a result of hiring paid preparers without sufficient knowledge of the unique issues facing small businesses. Relevant to today's debate on the deficit, holding paid preparers responsible for the special compliance issues associated with small business taxpayers is certainly not unreasonable.

Issues to be Addressed: promotion and enforcement

The agency continues to labor to construct an entirely new oversight program, one with ambitious timelines and deliverables. The task is far from complete, however, and this hearing allows me to touch on two issues of great importance: promotion and enforcement.

The IRS must continue to reach out to all segments of the paid preparer community to explain what is expected going forward into next filing season. The paid preparer market is fractured and many individuals are not associated with an organization (such as NAEA) dedicated to explaining regulatory changes. Nothing demonstrates this better than the fact the agency recently identified roughly 100,000 return preparers who failed to comply with the PTIN rules for the 2011 filing season. The agency clearly has a challenge when it comes to speaking to the full universe of paid return preparers and has room for improvement as the testing requirements come on line next year.

Even more importantly, the IRS must begin now to explain the new oversight rules to the public. Changes of this magnitude are likely to cause confusion among consumers, particularly as some paid preparers are bound to promote their practices in an unfamiliar (and quite possibly misleading) fashion. Additionally, an informed public is the best means of policing unlicensed individuals who attempt to continue to practice while remaining noncompliant with the new preparer rules. We also remain concerned that many noncompliant preparers will continue to set up shop in certain targeted communities around this country and continue exploiting less sophisticated taxpayers. The public will be our best defense against these individuals, but they must know and understand that they should only use qualified preparers.

Returning to our concern about marketing (and about protecting all taxpayers), the public must also understand the difference between the new registered tax preparers and the legacy Circular 230 practitioners – enrolled agents, CPAs and attorneys. This won't be easy but it is necessary for the integrity of this process. And, candidly, it needs to start now.

Promotion alone, however, will not carry the day. The significant effort the agency (not to mention its stakeholders) is expending on preparer oversight will be for naught absent a credible enforcement apparatus. Taxpayers and qualified preparers both need a single point of contact at the IRS to refer instances of suspected noncompliance. We believe the agency would make a grievous error if it focuses attention only on the compliant parties who get themselves in the system by registering and passing a competency test. The Service must be prepared to pursue and punish to the full extent of the law parties who continue to practice outside the new regulatory framework.

Closing

NAEA has for years advocated for return preparer oversight. We believe robust, meaningful oversight benefits taxpayers by creating the reasonable expectation that the person preparing a return is at least minimally qualified to do so, and benefits the preparer community by leveling the playing field. As I suggested earlier, IRS officials have made a number of tough—and correct—decisions thus far. As we close in on some final calls with respect to testing, tiering, promotion and enforcement, we urge the agency and those who provide oversight to the agency, to make decisions based on protecting all taxpayers.

Thank you for allowing the National Association of Enrolled Agents to testify today. I look forward to your questions.