

**THE IMPLEMENTATION OF THE IRS PAID TAX  
RETURN PREPARER PROGRAM**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT  
OF THE  
COMMITTEE ON WAYS AND MEANS  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

\_\_\_\_\_  
JULY 28, 2011  
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**Serial No. 112-OS7**

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Printed for the use of the Committee on Ways and Means



U.S. GOVERNMENT PRINTING OFFICE

70-890

WASHINGTON : 2011

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**THE IMPLEMENTATION OF THE IRS PAID TAX  
RETURN PREPARER PROGRAM**

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**THURSDAY, JULY 28, 2011**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
SUBCOMMITTEE ON OVERSIGHT,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:32 a.m., in Room 1100, Longworth House Office Building, the Honorable Charles Boustany [chairman of the subcommittee] presiding.

[The advisory of the hearing follows:]

# HEARING ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

## **Boustany Announces Hearing on New IRS Paid Tax Return Preparer Program**

Thursday, July 28, 2011

Congressman Charles W. Boustany, Jr., MD, (R-LA), Chairman of the Subcommittee on Oversight of the Committee on Ways and Means, today announced the Subcommittee will hold a hearing on the new IRS paid tax return preparer program. **The hearing will take place on Thursday, July 28, 2011, in Room 1100 of the Longworth House Office Building, beginning at 9:30 A.M.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing. A list of invited witnesses will follow.

### **BACKGROUND:**

Approximately sixty percent of taxpayers pay a professional to prepare their Federal income tax returns. The Government Accountability Office (“GAO”) has long noted the impact of these preparers on tax compliance and the need for stronger oversight of the tax preparer community. Among GAO’s concerns are errors by tax return preparers that affect improper payments, including an estimated \$106 billion in improper refundable tax credits in recent years.

In response to these and other concerns, the IRS initiated a tax return preparer initiative to stop erroneous returns at the source, rather than through the laborious and expensive audit process. The program has created a new category of paid return preparer: the “registered” tax return preparer.

As of January 1, 2011, anyone who is paid to prepare “all or a substantial portion” of a tax return is required to obtain a Paid-Preparer Tax Identification Number (“PTIN”). These registered tax return preparers will be subject to several requirements, including registration, competency testing, background checks, continuing professional education, and certain ethical standards. To date, approximately 717,000 individuals have received PTINs. PTINs issued to individuals who are not attorneys, certified public accountants, or enrolled agents, will only be valid until 2013, when the preparers must meet the additional requirements.

In January 2010, the IRS estimated that the program would take three years to be fully implemented and to show results in reducing improper payments to the clients of these preparers. However, a year and a half later, GAO has urged the IRS to provide measurable performance goals and better communicate with tax practitioners regarding the new requirements.

In announcing the hearing, Chairman Boustany said, **“This hearing is a continuation of the Subcommittee’s oversight of the IRS and the alarming rates of tax noncompliance. With so many Americans relying on paid professionals to prepare their returns, it is critical that we better understand what the IRS is doing and what impact the new regulations will have on taxpayers, paid tax return preparers, and tax compliance.”**

### **FOCUS OF THE HEARING:**

The hearing will focus on reviewing the new requirements on paid return preparers, assessing progress made by the IRS in preparing and implementing a program work plan, and understanding how this will ultimately impact the tax return preparer community and taxpayers.

**DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

**Please Note:** Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select "Hearings." Select the hearing for which you would like to submit, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Tuesday, August 11 2011**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225-1721 or (202) 225-3625.

**FORMATTING REQUIREMENTS:**

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone, and fax numbers of each witness.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://www.waysandmeans.house.gov/>.

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Chairman BOUSTANY. Good morning, everyone, and welcome to this morning's Oversight Subcommittee hearing on the IRS paid tax return preparer program.

In recent years the increasing complexity of the Internal Revenue Code has led more and more Americans to rely on paid tax return preparers to fulfill their tax return filing obligations. Paid tax return preparers prepared an estimated 60 percent of all federal returns filed. In fact, at a subcommittee hearing earlier this year, even the commissioner of the IRS testified that he relies on a paid return preparer.

Paid tax return preparers serve an important role in tax administration, and are often a taxpayer's only source of advice on their income taxes. GAO has monitored this trend, and issued reports

detailing the need for increased oversight on the rapidly growing tax return preparer community.

The results of these reviews are somewhat disheartening. GAO has found that nearly all tax returns that were prepared during its review contained mistakes. Not all mistakes were intentional, but they all contribute to erroneous returns that have cost taxpayers billions of dollars. For example, errors related to refundable tax credits, if you look at all of them, have led to an estimated \$106 billion in improper payments over the last decade.

In 2010, the IRS launched a paid return preparer initiative, which it hopes will stop abusive returns at the source, rather than through lengthy and expensive audit processes. Under this new oversight regime, return preparers must register with the IRS, pay an application fee, and will be assigned a unique identification number. The IRS also plans to impose mandatory minimum competency testing, continuing education requirements, background and tax checks, and certain ethical standards.

The IRS believes this program will improve preparer competence and service to taxpayers, and result in greater tax compliance. This morning's hearing will focus on how this program is coming together, and how it might affect both taxpayers and the return preparer community.

This initiative enjoys broad-based support, but there are some lingering concerns and questions that remain unanswered. Much of the program will not be in place until 2013, so we will not know its full impact for some time. However, it does remain unclear how the initiative will ultimately impact tax compliance. A recent report issued by GAO raised concerns regarding the program's future effectiveness.

We do not yet know the full cost and compliance burdens the new program will place on return preparers, or whether the requirements will yield the intended benefits. Indeed, the new requirements will cost tax return preparers an estimated \$51 million to \$77 million annually in registration fees alone. This does not include the additional cost associated with taking the competency examination and continuing education.

It is also necessary that the IRS conduct outreach to ensure that return preparers and taxpayers alike know and understand the new requirements. Without an effective public education campaign and enforcement plan, some argue that little progress is being made at reaching preparers that pose the greatest compliance risk. And we do understand there are challenges with that, but this will be one issue we can examine.

This is a critical issue for tax administration, and it is important that Congress understand the new requirements and continues its oversight to judge whether the new program improves tax compliance. Tax payers, paid preparers, and the IRS are best served if this initiative is successful.

Before I yield to Ranking Member Lewis, I ask unanimous consent that all Members' written statements be included in the record.

[No response.]



Chairman BOUSTANY. Without objection, so ordered. And now I turn to the ranking member, Mr. Lewis, for his opening statement.

Mr. LEWIS. Thank you, Chairman Boustany, for holding this hearing. The regulation of paid tax return preparers is an important topic, important for taxpayers and important for tax compliance. I want to commend the Internal Revenue Service for its leadership in this area, and am pleased with the overall strategy of the agency and its time line for phasing in the new requirements.

I am also pleased that many in the paid preparer community support the program. We have all heard too many stories of fly-by-night tax preparers who take advantage of low-income and middle-income taxpayers. I have long believed that regulating tax preparers will protect taxpayers by making sure persons who are paid to prepare returns are knowledgeable and trustworthy.

I also believe that regulating tax preparers will enhance tax compliance. The new requirements will allow the IRS to provide more oversight of preparers. This will allow the agents to detect patterns of fraud or simple errors, and take steps to remedy the problems and protect taxpayers.

In closing, I want to thank our witnesses for being here today. I look forward to your testimony and any recommendations you may have for protecting taxpayers and educating them about this necessary program.

Thank you very much, Mr. Chairman.

Chairman BOUSTANY. I thank the gentleman for his statement. We will now turn to our first panel of witnesses. I want to welcome Mr. David Williams, who is director of the IRS Return Preparer Office, and Mr. Jim White, who is director of strategic issues with the Government Accountability Office. I want to thank both of you for being here today, and for the work you are doing on this. You will each have five minutes to present your testimony, with your full written testimony submitted for the record.

Mr. Williams, I know you have done a lot of work on this, and we appreciate you being here, and look forward to your testimony. I do know that this is a big priority for Commissioner Shulman.

And so, you may proceed, sir.

**STATEMENT OF DAVID WILLIAMS, DIRECTOR, IRS RETURN PREPARER OFFICE, INTERNAL REVENUE SERVICE, WASHINGTON, D.C.**

Mr. WILLIAMS. Thank you, Mr. Chairman, Ranking Member Lewis, and Members of the Subcommittee. We really appreciate the opportunity to testify on the IRS's tax return preparer program, which we think is one of the most important initiatives that the IRS has undertaken in recent memory.

For decades, most taxpayers prepared their own returns. However, over the past 20 to 30 years, the reality of tax filing in this country has changed dramatically. Today, more than 8 out of 10 taxpayers use a preparer or tax software.

There are a number of positives in this growing trend. One of the most important is that qualified return preparers can help taxpayers file accurate and timely returns from the start. Working with the taxpayer, they can prevent inadvertent errors, which can

save both taxpayers and the IRS precious time and resources, and keep taxpayers' interactions with the IRS to a minimum, which I think many taxpayers will prefer.

I want to stress that the IRS sees the professional return preparer community as a strong ally in our efforts to boost overall service and compliance. This program is all about inclusion and leveraging the return preparer community as a partner.

Many people are surprised to discover that, despite the fact that paying taxes is one of the largest financial transactions that the average American family has each year, there have been no basic competency requirements, and little oversight for paid tax return preparers who are not attorneys, enrolled agents, or certified public accountants. Practically anyone can prepare a federal tax return for any other person for a fee.

Through the return preparer program, the IRS wants to strengthen its partnerships with tax practitioners, tax return preparers, and other third parties to ensure effective tax administration. In addition, we want to ensure all of these participants have a minimal level of competency, and adhere to professional standards.

In implementing the tax return preparer program, we have worked closely with stakeholders every step of the way, and we plan to continue this practice, going forward. At each stage of the process, from the initial review, which included three public hearings and about which we received more than 500 public comments, to the implementation of subsequent requirements which we have discussed with hundreds of stakeholders in meetings and public sessions, we have been committed to engaging with our stakeholders, listening to their concerns and suggestions, and making appropriate changes to our plans, in light of their feedback.

Supporting this approach is the staged implementation process we have adopted. In September of 2010 the IRS launched phase one by issuing regulations requiring paid return preparers to register with the IRS, and to obtain a preparer tax identification number or PTIN. As a result of our wide-ranging outreach and education program, we have registered over 717,000 return preparers to date. More than an identification number, the PTIN registration process gives the IRS an important and better line of sight into the return preparer community than we have ever had before. We can leverage that information to help better analyze trends, spot anomalies, and potentially detect fraud.

The PTIN process will also help the IRS build, in several years, a publicly-accessible database of those registered. This is an extremely important tool for consumers, as they will be able to search that database to ensure that their preparer is registered. And it will make it easier for everyone to find and track return preparers.

As described in my written testimony, the next phase of the program involves background checks, competency testing, and the annual completion of 15 hours of continuing education for many paid return preparers. We will begin rolling out parts of the program later this year, and on into 2012. As I mentioned above, we are seeking public input as we conduct this implementation. In fact, we have issued formal requests for public comment on both testing

and continuing education. We have received hundreds of responses that will help guide our plans.

Mr. Chairman, in conclusion, the tax return preparer program strengthens the IRS's partnerships with tax practitioners who are already registered and regulated and tested, while ensuring that all return preparers are serving the American public well. This is a point of leverage where the IRS can maximize the use of our resources, while tapping into the experience, specialized knowledge, infrastructure, technology, and activities of other players in the tax system, and make them an integral part of our service and compliance strategies.

[The prepared statement of Mr. Williams follows:]

**WRITTEN TESTIMONY  
DAVID R. WILLIAMS  
DIRECTOR  
RETURN PREPARER OFFICE  
INTERNAL REVENUE SERVICE  
HOUSE WAYS & MEANS  
SUBCOMMITTEE ON OVERSIGHT  
HEARING ON  
RETURN PREPARER PROGRAM  
JULY 28, 2011**

**INTRODUCTION AND SUMMARY**

Chairman Boustany, Ranking Member Lewis and Members of the Subcommittee, thank you for this opportunity to testify on the Internal Revenue Service's Tax Return Preparer program, one of the most important initiatives that the IRS has undertaken in recent memory.

For decades, most taxpayers prepared their own returns. However, over the past 20-30 years, the reality of tax filing in this country has changed dramatically and today, more than 8 out of 10 taxpayers use a tax preparer or tax software.

However, despite the fact that paying taxes is one of the largest financial transactions that the average American family has each year, there have been no basic competency requirements for tax return preparers. Practically anyone can prepare a federal tax return for any other person for a fee.

Through the Tax Return Preparer Program, the IRS is in the process of ensuring a basic competency level for tax return preparers and focusing our enforcement efforts on rooting out unscrupulous preparers.

To date, we have registered over 717,000 return preparers and next year will start requiring a competency test and annual continuing education for many preparers who are not a CPA, attorney or enrolled agent.

The goal is to ensure that taxpayers receive top quality service from this important industry, which is a key ally in the IRS' efforts to boost overall service and compliance. We want to help taxpayers file accurate returns from the start, thereby avoiding potentially time-consuming and costly problems further along in the tax filing process.

**BACKGROUND**

The role of third party assistance in tax return preparation in the United States has become increasingly important, particularly in light of growing tax law complexity and growing taxpayer confusion over how to comply with the tax code and meet their

responsibilities. With the increasing complexity of the tax laws, this trend will only continue.

For 2007 and 2008, more than 80 percent of all federal individual income tax returns were prepared by paid tax return preparers or by taxpayers using consumer tax preparation software.

It was in recognition of this tectonic change in our tax system that the IRS' 2009-2013 Strategic Plan emphasized the need to ensure that all tax practitioners, tax preparers, and other third parties in the tax system adhere to professional standards and follow the law.

The plan included three strategies related to this objective: (1) develop and implement a coordinated preparer plan across the IRS and the preparer community; (2) administer a fair, diligent, and effective system of sanctions and penalties for those who fail to follow the law; and (3) leverage research to identify fraudulent return preparers and other areas of abuse and noncompliance by return preparers.

#### **QUALIFIED RETURN PREPARERS: AN IMPORTANT ALLY**

There are a number of positives in the growing trend of taxpayers using qualified tax return preparers. One of the most important is that qualified return preparers can help taxpayers file accurate and timely returns from the start.

Working with the taxpayer, they can prevent inadvertent errors which can save both taxpayers and the IRS precious time and resources and keep taxpayers' interactions with the IRS to a minimum.

There are other tangible benefits. In a world of greater complexity qualified tax return preparers can assist taxpayers in understanding complex requirements and thereby increase compliance. They can also explain taxpayer rights and responsibilities.

Indeed, the IRS sees the professional return preparer community as a strong ally in our efforts to boost overall service and compliance.

#### **INCONSISTENT OVERSIGHT**

As noted in the introduction, an individual's or family's return filing is often one of their biggest financial transactions in any given year. However, many preparers do not have to meet any professionally-mandated competency requirements; any person can prepare a federal tax return for any other person for a fee.

It might surprise taxpayers to learn that the level of oversight of paid return preparers varies widely. There is little oversight of paid tax return preparers who are not attorneys, enrolled agents, and certified public accountants.

The Government Accountability Office (GAO), the Treasury Inspector General for Tax Administration (TIGTA) and our own research suggest that our tax system and a large number of taxpayers may be poorly served by some return preparers who engage in fraud.

Within this context it is important to note that it is the taxpayer who is legally responsible for penalties and interest if their return is not accurately prepared, or they claim deductions or tax credits, including refundable tax credits, to which they are not entitled.

#### **TAX RETURN PREPARER REVIEW**

Given the critical mass of issues building around paid tax return preparers, the IRS launched its review of the return preparer industry in June of 2009 with the hope of meeting two of the IRS' most important goals, while reflecting the Agency's commitment to working smarter.

First, the IRS wanted to strengthen its partnerships with tax practitioners, tax return preparers, and other third parties to ensure effective tax administration. Second, it wanted to ensure all preparers have a minimal level of competency and adhere to professional standards with an overarching objective of better service to taxpayers and increased compliance.

The IRS conducted three public forums to capture the views and recommendations of not only the return preparer community but all affected stakeholders and interested parties.

#### **FINDINGS AND RECOMMENDATIONS**

In January 2010, the IRS published the results of its six-month study (Publication 4832) and announced the return preparer initiative representing a monumental shift in the way the IRS will oversee paid tax return preparers. This new initiative provided for registration, competency testing and continuing education for paid tax return preparers. The new initiative also places all registered tax return preparers under the ethical umbrella of Circular 230 and gives the IRS disciplinary tools to address preparer misconduct.

The overarching goals are to significantly enhance protections and service for taxpayers; increase confidence in the tax system; and provide for greater compliance with tax laws.

For example, the Tax Return Preparer Initiative is expected to reduce Earned Income Tax Credit (EITC) fraud and error, as approximately 66 percent of EITC returns are prepared by paid tax return preparers.

Based on the results of the Return Preparer Review, the IRS recommended a number of steps that it plans to implement, including:

- Requiring all paid tax return preparers to register with the IRS and obtain a preparer tax identification number (PTIN). These preparers will be subject to a tax compliance check to ensure they have filed all required federal personal, employment and business tax returns and that the tax due on those returns has been paid.
- Requiring competency tests for all paid tax return preparers except attorneys, certified public accountants (CPAs), and enrolled agents who are active and in good standing with their respective licensing agencies.
- Requiring ongoing continuing professional education for all paid tax return preparers who are subject to competency testing.
- Extending the ethical rules found in Treasury Department Circular 230 to all paid preparers. This expansion will allow the IRS to suspend or otherwise discipline tax return preparers who engage in unethical or disreputable conduct.

#### **STAGED IMPLEMENTATION PROCESS**

The return preparer initiative has been undergoing a staged implementation process. We have worked with outside stakeholders on each step of the implementation process and have taken steps to minimize burden when possible. In September 2010, the IRS launched Phase 1 by issuing regulations requiring paid tax return preparers to register with the IRS to obtain a Preparer Tax Identification Number, or PTIN. PTINs are required for all individuals who are paid to prepare all or substantially all of a federal tax return or claim for refund.

Although PTINs have been available since 1998, they were optional. As part of the new registration process, PTINs are now mandatory for all paid tax return preparers and all preparers are required to apply for a PTIN under the new system, including those preparers who already possessed a PTIN.

A new online application system was set up for this process with a special toll-free telephone number for tax professionals needing assistance with the system. We developed an outreach plan that provided reminder notices to about one million tax return preparers that they must renew their Preparer Tax Identification Numbers if they are still paid preparers.

To date, over 717,000 PTINs have been issued, with 95 percent of the applications processed online. By issuing PTINs, the IRS not only receives information about the size of the tax preparer community, but also the mix of CPAs, enrolled agents and others in this practitioner universe. One data point rises to the top: 62 percent of PTIN holders are not attorneys, certified public accountants, or enrolled agents

**AN IMPORTANT LINE OF SIGHT**

More than an identification number, the PTIN registration process gives the IRS an important and better line of sight into the return preparer community than we have ever had before. We can leverage that information to help better analyze trends, spot anomalies and potentially detect fraud.

The PTIN process will also help the IRS build, in several years, a publicly-accessible database of those registered. This is an extremely important tool for consumers as they will be able to search the database to ensure that their preparer is registered. The database will confirm for the public which return preparers are properly registered with the IRS

**PHASE TWO**

The next phase of the return preparer initiative involves tailored requirements for different subsets of paid return preparers. For example, CPAs, attorneys, and enrolled agents must only renew their PTIN annually; there are no other requirements. They are exempt from competency testing and continuing education requirements because of similar professional standards already applicable to these groups.

The IRS also refined its rules and provided greater flexibility for people who work in a professional firm, such as an accounting or law firm, and prepare returns under the supervision of an accountant, enrolled agent or lawyer. These supervised preparers and other non-1040 preparers – who do not prepare any Form 1040 series returns – must renew their PTIN and satisfy the compliance and background checks. They too are exempt from competency testing and continuing education requirements.

All other paid return preparers must: (1) renew their PTIN annually; (2) satisfy the compliance and background checks; (3) pass a competency test; and (4) take continuing education courses annually. Those who meet these requirements will be designated as “Registered Tax Return Preparers”.

We estimate that background checks will begin in October 2011. We also estimate an October 2011 start date for competency testing. The test is only for those who prepare Form 1040 series returns (and who are not otherwise exempt).

The IRS recognizes there has been some discussion in the tax return preparer community about whether there is a need to extend the testing requirement to other types of returns. With 140 million individual income taxpayers filing Form 1040 and 60 percent using a preparer, our focus will be on dealing first and foremost with that group of preparers and returns.



As the roll out of the new requirements for paid tax return preparers is being phased in, for the 2011 filing season, the IRS issued “provisional” PTINs. The PTIN is provisional because these PTIN holders must satisfy additional obligations such as testing or fingerprinting. Provisional PTIN holders will have until the end of 2013 to meet these additional requirements.

Those who are required to take the competency test will also have a new annual education requirement beginning in 2012. The 15 hours of continuing education includes three hours of federal tax law updates, two hours of ethics and ten hours of federal tax law.

#### **BUILDING A COMPREHENSIVE COMPLIANCE STRATEGY**

Mr. Chairman, let me turn to compliance. We must also have a comprehensive compliance and enforcement strategy. We want return preparers to be competent and ethical in order to prepare the most accurate returns possible, and we also owe it to compliant tax preparers to make sure that everyone is on a level playing field.

To this end, the IRS sent out more than 10,000 letters to tax return preparers nationwide to remind them of their obligation to prepare accurate tax returns on behalf of their clients. These letters were sent to paid preparers who completed tax returns in which the IRS identified common errors. The letter included an enclosure that reminded tax return preparers of their responsibility to prepare accurate returns and the consequences of filing incorrect returns.

During the 2011 filing season, IRS representatives also visited approximately 2,500 tax return preparers who received these letters to further discuss their responsibilities as a return preparer and to verify their compliance with existing requirements.

The IRS continues to develop and enhance various internal filtering tools to detect egregious behavior and inaccurate return preparation. These tools will enable the IRS to look at all individual return information and extract unique characteristics, identifying likely questionable issues with a return preparer.

As previously noted, we are developing a comprehensive database to house all preparer information, with the goal of detecting unscrupulous return preparers and intervening early. This central database will enable the IRS to track preparers who try to avoid detection by changing locations and customers. The IRS is also designing a referral system to investigate and timely address taxpayer and stakeholder complaints surrounding return preparers. We are also developing an identification system for preparers who are being compensated to prepare returns, but who are not properly identifying themselves. These “ghost preparers” do not enter their name or PTIN on the returns they prepare.

Specifically regarding PTIN compliance, we performed an analysis after the recent filing season and identified over 100,000 instances of what appeared to be preparers who

entered an expired PTIN or their SSN on a return – which is no longer allowable. On July 7, we sent letters to these individuals advising them to obtain and begin using PTINs in the future if they are paid tax return preparers.

Components of our strategy also include: reviewing the personal tax compliance of return preparers; visiting preparers; reviewing a sampling of a preparer's client returns where misconduct is suspected; and "e-file visits" where a revenue agent stops by and reviews whether a preparer is following all e-file rules.

These initial efforts are aimed at improving both the way in which IRS identifies problematic preparers and the methods used to bring them into compliance.

#### **MEASURING PERFORMANCE**

Measuring performance is a key component for any program, and the IRS must monitor how the new return preparer initiative is adding value to tax administration. We are developing long-term strategic measures that will enable the Service to assess the effect of the program. We are working to establish a baseline for measures in 2012 and to develop a more customized means to measure the tax administration impacts of the preparer program over the next two to three years.

Developing a comprehensive model for measuring the program's overall effect on compliance, in both the long and short term, is essential to determining future changes and improvements to the program, the processes and the underlying policies.

#### **PROTECTING TAXPAYERS**

Mr. Chairman, the return preparer initiative is already producing meaningful results that benefit both taxpayers and protect the integrity of our tax system. For example, the IRS is taking steps to stop tax preparers with criminal tax convictions from preparing tax returns.

By comparing the new PTINs with a database managed by the IRS' Office of Professional Responsibility, the IRS was able to identify 19 tax preparers who applied for PTINs and either failed to disclose a criminal tax conviction or were permanently enjoined from preparing tax returns. The IRS sent letters to all 19 individuals proposing revocation of their PTINs.

As mentioned earlier, some preparers attempt to elude the new oversight program by not signing returns they prepare. In an effort to deal with these "ghost preparers," the IRS is developing a strategy to educate taxpayers whose returns appear to have been prepared by a third party, but without a name or PTIN entered, to ensure that they are aware that all paid federal tax return preparers are required to sign and include PTINs on returns that they prepare for compensation.

The Return Preparer Office is also engaged in initial planning for the public database and a general public outreach campaign. As previously mentioned, the database will give the taxpaying public a resource to ensure their preparer is legitimately registered with the IRS or, for those taxpayers searching for a preparer, a tool to find an authorized person in their geographic area. We anticipate the database and outreach campaign will launch in 2013 around the deadline for testing and fingerprinting.

#### **CONCLUSION**

The return preparer initiative is one of the most important initiatives and defining actions that the IRS has taken in recent years. It strengthens partnerships with tax practitioners who are already regulated and tested, while ensuring that all return preparers are serving the American people well. As Commissioner Shulman has observed, this is a “point of leverage” where the IRS can maximize the use of our resources, while tapping into the experience, specialized knowledge, infrastructure, technology and activities of other players in the tax system and making them an integral part of our service and compliance strategies.

Chairman BOUSTANY. Thank you, Mr. Williams.  
Mr. White, you may proceed.

**STATEMENT OF JIM WHITE, DIRECTOR, STRATEGIC ISSUES,  
GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, D.C.**

Mr. WHITE. Thank you, Mr. Chairman, Ranking Member Lewis, and Members of the Subcommittee. I am pleased to be here to discuss paid preparer regulation, and how it might improve our tax system.

As you stated, Mr. Chairman, paid preparers are one of the cornerstones of tax administration in this country. They prepare 60 percent of returns. Many taxpayers no longer interact directly with IRS, they turn to preparers for answers to questions and assistance filing. Today I will discuss IRS's implementation of paid preparer regulation, and how IRS might leverage it to improve service to taxpayers and the accuracy of their returns.

But first, some background on paid preparer performance. In 2002, we found that as many as 2.2 million individual taxpayers likely overpaid their taxes by about \$1 billion by not itemizing their deductions. About half making this mistake used a paid preparer. While it is hard to know whether the taxpayer or the preparer was responsible, it raised questions about preparer performance.

In 2006 we went undercover and had 19 tax returns prepared for a hypothetical plumber and working mother. All 19 had errors: two had our hypothetical taxpayers overpaying by about \$1,500; and five of them underpaying by almost \$2,000 each.

In 2008 we studied Oregon, one of 2 states to regulate paid preparers. While we could not provide causation, returns prepared by Oregon preparers were more accurate than the national average.

In 2009 IRS recommended registration of paid preparers, competency testing, and continuing education, and holding all preparers to standards of practice.

Now, I will discuss IRS's implementation of the recommendations. This year, IRS required that all paid preparers register and get a preparer tax ID number, or PTIN. Even this seemingly modest step has benefits. It will give IRS a more accurate count of the number of paid preparers. As of this month, as Mr. Williams just said, IRS says 717,000 paid preparers have registered. IRS has a proposed time line for the other new requirements. Next is competency testing. It will start later this year, with current preparers having until the end of 2013 to pass the test.

Initially, IRS is using a soft touch to enforce the new requirements, encouraging preparers to register with outreach and education. This month, the IRS began notifying about 100,000 paid preparers who signed tax returns but did not use a PTIN about how to get a PTIN. IRS is planning to get tougher on preparers who do not comply. For example, IRS said it will send letters to taxpayers whose returns were not signed by the apparent preparer. The letter will explain how to file a complaint about unregistered preparers, and choose a preparer who is complying.

Now I want to discuss the ultimate goal of preparer regulation. The goal is to leverage the paid preparer community to: first, help taxpayers file more accurate tax returns, so taxpayers neither underpay nor overpay their taxes; and second, to reduce the burden on taxpayers by reducing confusion, and facilitating filing.

To leverage the paid preparer community, several actions by IRS are necessary. One is research. We have consistently stressed the importance of IRS conducting research to identify areas of non-compliance, and test strategies for improving compliance. The idea is to have a continual feedback loop, where IRS learns about what is effective or not, modifies its approach accordingly, does more research, and so on. To its credit, IRS has just such a framework in mind for paid preparer regulation. It includes developing a comprehensive database on preparers, and the tax returns they prepare, and then analyzing it to develop and test strategies for improving the accuracy of returns.

Likewise, IRS wants to measure the effects of the new strategy—of the new testing and continuing education requirements on tax return accuracy. However, as of our March report, IRS had not documented its research and assessment framework. This matters, because one of the other actions necessary to successfully leverage paid preparer regulation is buy-in from preparers. Without a documented framework, it is not easy for preparers who bear the cost of the regulations to tell what they are supposed to be buying into. Some members and officials of paid preparer organizations told us the new requirements will only be worthwhile if they result in improved compliance. In our report we recommended that IRS document its framework, and IRS agreed.

I will close by noting the potential for paid preparer regulation to be part of a fundamental rethinking of IRS's approach to assisting taxpayers and ensuring compliance. Combined with other efforts such as systems modernization, more pre-refund compliance checks, and innovative uses of information returns, paid preparer regulation could help improve taxpayer compliance, while reducing both the compliance burden on taxpayers and IRS's costs.

That concludes my statement, and I would be happy to answer questions.

[The prepared statement of Mr. White follows:]

United States Government Accountability Office

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**GAO**

Testimony  
Before the Subcommittee on Oversight,  
Committee on Ways and Means, House of  
Representatives

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For Release on Delivery  
Expected at 9:30 a.m. EDT  
Thursday, July 28, 2011

**TAX PREPARER  
REGULATION**

**Improving Tax Return  
Accuracy Depends on IRS's  
Use of New Requirements**

Statement of James R. White, Director  
Strategic Issues





Highlights of GAO-11-567, a testimony before the Subcommittee on Oversight, Committee on Ways and Means, House of Representatives.

**Why GAO Did This Study**

Paid preparers are a cornerstone of the U.S. tax system, as they prepare approximately 60 percent of all tax returns filed, and their actions have an enormous impact on the Internal Revenue Service's (IRS) ability to administer tax laws effectively. In previous work, GAO found that taxpayers were not always served well by their paid preparers, and GAO proposed stricter oversight of preparers. In 2010, IRS began implementing new requirements for paid preparers and believes that the requirements will increase taxpayers' compliance.

This testimony addresses (1) prior GAO work on paid preparer performance, (2) IRS's progress in implementing the new requirements, and (3) how IRS can use the requirements to improve taxpayer compliance. It is based on GAO's March 2011 report on IRS's implementation of the paid preparer requirements and other GAO reports related to paid preparers. Further, GAO identified additional steps IRS has taken to implement the requirements since the March report was issued. GAO discussed the new information with IRS officials, and they concurred with the findings.

View GAO-11-567 or key components. For more information, contact James R. White at (202) 512-9110 or whitej@gao.gov.

**July 28, 2011**  
**TAX PREPARER REGULATION**

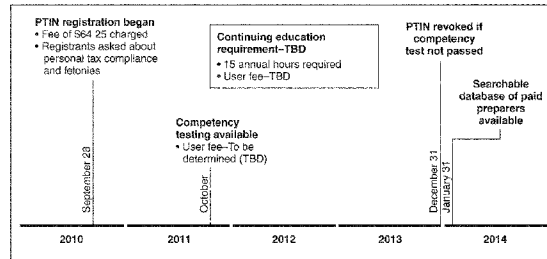
**Improving Tax Return Accuracy Depends on IRS's Use of New Requirements**

**What GAO Found**

As intermediaries between taxpayers and IRS, paid preparers can educate taxpayers about tax laws and prevent tax return errors and resulting IRS audits. However, GAO has found that paid preparers make errors. For example, in a 2006 report, GAO had tax returns prepared at 19 outlets of several commercial tax chains. All 19 returns had mistakes ranging from refund overclaims of nearly \$2,000 to underclaims of over \$1,700. In 2008, GAO reported that in Oregon, regulation of paid preparers corresponded with more accurate taxpayer returns.

To date, IRS has implemented a requirement that paid preparers obtain a preparer tax identification number (PTIN) and plans to implement competency testing and continuing education requirements. IRS also plans to require paid preparers to adhere to Department of the Treasury standards of practice. Initially, IRS plans to focus on educating paid preparers about the new requirements and not on penalizing them for noncompliance. However, it is developing and implementing strategies for ensuring paid preparers comply with the new requirements.

**Proposed Timeline for IRS's Implementation of Paid Preparer Requirements**



Source: IRS.

The extent to which the new paid preparer requirements will result in more accurate tax returns depends on IRS actions. In a March 2011 report, GAO recommended that IRS document a strategic framework for how it plans to leverage the requirements to improve taxpayer compliance. IRS agreed and is working on a plan. There are various ways that IRS can leverage the paid preparer requirements in order to provide better service to taxpayers and ultimately improve taxpayer compliance. For example, IRS management has discussed conducting research on which strategies are most effective for improving the quality of tax returns prepared by different types of paid preparers. Documenting this framework so it is transparent to paid preparers—who bear the burden of complying with the requirements—could assist with preparers' voluntary compliance by demonstrating the requirements' worth.

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Chairman Boustany, Ranking Member Lewis, and Members of the Subcommittee:

I am pleased to be here to discuss the Internal Revenue Service's (IRS) implementation of new requirements for paid tax return preparers<sup>1</sup> and how those requirements may lead to improved taxpayer compliance. Paid preparers are a cornerstone of our tax system, as they prepare approximately 60 percent of all tax returns filed, and their actions have an enormous impact on IRS's ability to administer tax laws effectively. In previous work, which I will discuss, we found that taxpayers were not always well served by their paid preparers, and we proposed stricter oversight of preparers. In 2010, IRS began implementing new requirements for paid preparers, such as requiring competency tests, and has concluded that the requirements will increase tax compliance. Improved compliance would reduce the tax gap between what is owed in taxes and what is paid voluntarily and on time. IRS's most recent estimate for the gross tax gap was \$345 billion for 2001.<sup>2</sup> Increased paid preparer performance could also benefit taxpayers by reducing their likelihood of being audited by IRS and subjected to resulting penalties and interest.

My testimony today will cover (1) GAO work on paid preparer performance prior to IRS's implementation of the new requirements, (2) IRS's progress in implementing the new requirements, and (3) how IRS can use the requirements to improve taxpayer service and compliance. My testimony is based on our March 2011 report on IRS implementation of the paid preparer requirements and other reports

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<sup>1</sup>A tax return preparer is any person who prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of a tax return or claim for refund of tax. 26 U.S.C. § 7701(a)(36).

<sup>2</sup>IRS estimated that it would eventually collect about \$55 billion of the gross tax gap through late payments and IRS enforcement actions, leaving a net tax gap of around \$290 billion.



related to paid preparers.<sup>3</sup> We also identified steps IRS has taken to implement the requirements since the March 2011 report was issued. We discussed the new information in this statement with IRS officials, and they concurred with our findings. Our work on the prior reports and this statement was conducted in accordance with generally accepted government auditing standards. Additional information on our scope and methodology is available in our published reports.

### GAO's Prior Work Identified Issues with Paid Preparer Performance

Paid preparers play a critical role in helping taxpayers meet their tax obligations. As intermediaries between taxpayers and IRS, paid preparers educate taxpayers about tax laws, guidance that can prevent errors and unnecessary audits. However, in prior reports, we found that taxpayers were not always well served by their paid preparers.

- In a 2002 report, we found that as many as 2.2 million individual taxpayers were likely to have overpaid their taxes by as much as \$945 million because they took the standard deduction instead of itemizing their deductions. About 50 percent of these taxpayers used a paid preparer.<sup>4</sup>
- For a 2006 report, we had tax returns prepared for us at 19 outlets of several commercial tax return preparation chains scattered throughout a major metropolitan area.<sup>5</sup> All 19 visits showed problems, and several of the preparers gave us incorrect tax advice. As shown in figure 1, only 2 of 19 tax returns showed a correct tax refund amount, and in both of those visits the paid preparer made mistakes that did not affect the final refund amount. While some errors had fairly small tax consequences, others had very large consequences. Incorrectly

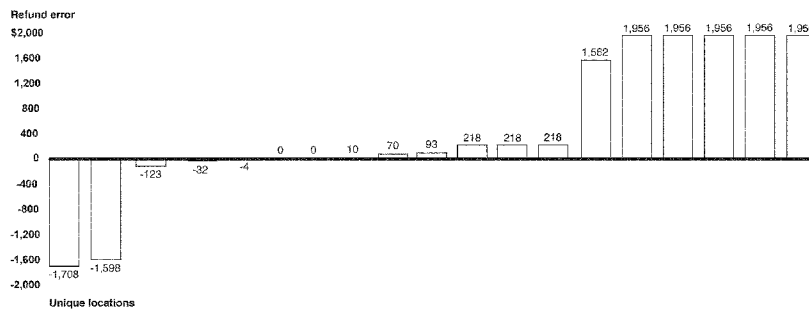
<sup>3</sup>GAO, *Tax Preparer Regulation: IRS Needs a Documented Framework to Achieve Goal of Improving Taxpayer Compliance*, GAO-11-336 (Washington, D.C.: Mar. 31, 2011); *Tax Preparers: Oregon's Regulatory Regime May Lead to Improved Federal Tax Return Accuracy and Provides a Possible Model for National Regulation*, GAO-08-781 (Washington, D.C.: Aug. 15, 2008); *Internal Revenue Service: Fiscal Year 2009 Budget Request and Interim Performance Results of IRS's 2008 Tax Filing Season*, GAO-09-567 (Washington, D.C.: Mar. 13, 2008); *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors*, GAO-06-563T (Washington, D.C.: Apr. 4, 2006); and *Tax Deductions: Further Estimates of Taxpayers Who May Have Overpaid Federal Taxes by Not Itemizing*, GAO-02-509 (Washington, D.C.: Mar. 29, 2002).

<sup>4</sup>GAO-02-509.

<sup>5</sup>GAO-06-563T.

reported refunds ranged from refunds overclaimed by nearly \$2,000 to underclaims of over \$1,700.

**Figure 1: Refund Amounts over or under Correct Amount from GAO Paid Preparer Visits**



Source: GAO.

Although few states regulate paid preparers, in a 2008 report we found that Oregon's paid preparer regulatory regime may have led to more accurate federal tax returns.<sup>6</sup> Based on this finding, we suggested Congress adopt a nationwide paid preparer regulatory regime similar to Oregon's paid preparer regulatory regime if it judged that Oregon's regulatory regime accounted for at least a modest portion of the higher federal tax return accuracy in the state at a favorable cost compared to potential benefits. In another 2008 report we recommended that IRS develop a plan to require a single identification number for paid preparers, including the feasibility of options, benefits and costs of those options, as

<sup>6</sup>GAO-08-781. Oregon requires paid preparers to complete qualifying education, pass a state-administered examination, and register to be certified as a Licensed Tax Preparer. Paid preparers must complete 30 hours of continuing education and reregister in each subsequent year. Oregon also requires that all preparers work under the supervision of a Licensed Tax Consultant, CPA, public accountant, or attorney. California, Maryland, and New York also regulate paid preparers but oversight in each state varies.

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well as their usefulness for enforcement and research on paid preparer behavior.<sup>7</sup>

In June 2009, the Commissioner of Internal Revenue initiated a review of paid preparers to help IRS strengthen its partnerships with paid preparers and ensure that paid preparers adhere to applicable professional standards and follow tax laws. IRS recommended changes to the oversight of paid preparers in its December 2009 Return Preparer Review report.<sup>8</sup> These recommended changes included:

- mandatory registration for paid preparers who are required to sign a federal tax return;
- competency testing and continuing education for paid preparers who are required to register with IRS and who are not attorneys, certified public accountants, or enrolled agents, who generally must complete continuing education requirements to retain their professional credentials; and
- holding all paid preparers to standards of practice under Department of the Treasury *Circular No. 230*,<sup>9</sup> which governs the practice of practitioners before IRS,<sup>10</sup> regardless of whether or not the preparers are required to sign a federal tax return.

IRS intends these new requirements to improve service to taxpayers, increase confidence in the tax system, and increase taxpayer compliance.

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### IRS Has a New Registration Requirement for Paid Preparers and Plans for Gradual Implementation

IRS has implemented a requirement that paid preparers obtain a preparer tax identification number (PTIN) if they prepare all or substantially all of a

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<sup>7</sup>GAO-08-567.

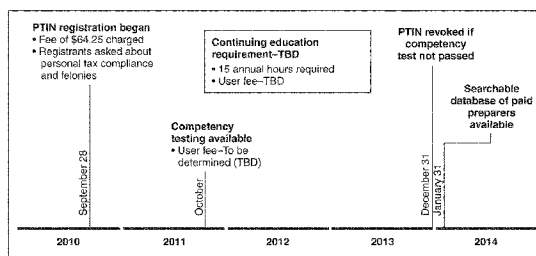
<sup>8</sup>IRS, *Return Preparer Review*, IRS Publication 4832 (December 2009).

<sup>9</sup>31 C.F.R. part 10.

<sup>10</sup>Practice before IRS encompasses all matters connected with a presentation to IRS relating to taxpayer's rights, privileges, or liabilities under tax laws, including preparing documents or filing documents with IRS. Practitioners are attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and on August 2, 2011, will include registered tax return preparers. 31 C.F.R. § 10.2(a).

tax return filed after December 31, 2010.<sup>11</sup> Figure 2 shows IRS's tentative schedule for implementing other new requirements, including competency testing and continuing education. In addition to those requirements, IRS will require all paid preparers to adhere to *Circular 230* standards of practice, revisions to which have been finalized and take effect on August 2, 2011.<sup>12</sup>

**Figure 2: Proposed Timeline for IRS's Implementation of Paid Preparer Requirements**



Source: IRS.

According to IRS, as of mid-July 2011, 717,000 paid preparers have registered for a PTIN. Paid preparers may register for a PTIN online or on paper via Form W-12, *IRS Paid Preparer Tax Identification Number (PTIN) Application*.<sup>13</sup> When applying for a PTIN, paid preparers are asked, under penalty of perjury, to self-disclose if they are compliant with their

<sup>11</sup>*Furnishing Identifying Number of Tax Return Preparer (Final Rule)*, 75 Fed. Reg. 60,309 (Sept. 30, 2010). In *IRS Notice 2011-6*, IRS has provided a list of forms for which a paid preparer will not be required to obtain a PTIN in order to prepare.

<sup>12</sup>*Regulations Governing Practice Before the Internal Revenue Service (Final Regulations)*, 76 Fed. Reg. 32,286 (June 3, 2011).

<sup>13</sup>The fee for PTIN registration is \$64.25. The IRS portion of the fee is \$50, with the remaining \$14.25 being a fee charged by the vendor that will establish and maintain the PTIN registration system. We determined that IRS set its portion of the user fee consistent with established criteria.

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personal and business taxes. The IRS Return Preparer Office (RPO) Director said that IRS plans to initiate automated tax compliance checks on all paid preparers. IRS plans to limit the checks to whether the preparers have filed all federal tax returns and paid or entered into an agreement to pay federal tax debts. Paid preparers are also asked, under penalty of perjury, if they have been convicted of a felony in the past 10 years. The RPO Director said that IRS plans to begin the process of checking the accuracy of registrants' tax compliance and background information by late 2011 and that registrants who provide false information on their PTIN applications will have severely limited appeal rights if IRS proposes to deny them PTINs.

*Circular 230* will require individuals to pass a competency test to become a registered tax return preparer. The competency test will cover individual income tax return issues only, and attorneys, certified public accountants, enrolled agents, certain supervised preparers, and individuals who do not prepare individual income tax returns and associated schedules and forms are not required to take the competency test. Paid preparers who have a valid PTIN before competency testing is available will have until 2013 to pass a competency test and complete the suitability check. Paid preparers who register for a PTIN after testing is available must pass a competency test before obtaining a PTIN. IRS plans for testing to be available beginning in October 2011 (see figure 2 above). Registered tax return preparers will be subject to suitability checks, which they may undergo either before taking or after passing the competency test. IRS plans to conduct these checks to determine whether the individuals have engaged in disreputable conduct. In addition, IRS plans to implement a continuing education requirement whereby paid preparers who are required to take the competency test will be required to take 15 hours of training annually—3 hours of federal tax law updates, 2 hours of ethics, and 10 hours of additional federal tax topics. The RPO Director said that IRS plans to approve continuing education providers rather than individual courses and audit a random sample of continuing education courses.

Initially, IRS plans to focus on educating paid preparers about the new requirements, and not on penalizing paid preparers for noncompliance, according to the RPO Director. In November 2010, IRS sent letters to 10,000 paid preparers to remind them of their responsibility to comply with requirements for paid preparers, including registering for a PTIN. In July 2011, IRS began sending letters to about 100,000 paid preparers who used identifying numbers other than a new PTIN on returns they prepared during the 2011 filing season. The letters explain the new

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oversight program and inform preparers of how to obtain a new PTIN and where to get assistance. In addition, the RPO Director told us IRS is evaluating methods to identify individuals who prepare tax returns for others but do not sign the returns as paid preparers. IRS states that later this year it will send letters to taxpayers whose returns appear to have been prepared with assistance but do not include tax return preparer signatures. The letters will inform taxpayers how to file a complaint against preparers who failed to sign returns and explain how to choose legitimate tax preparers. IRS states that the goal of the letters is to protect taxpayers by ensuring that all paid federal tax return preparers are registered with IRS, sign tax returns they prepare, and use an identifying number when required to do so.

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**IRS's Plans for  
Leveraging the Paid  
Preparer  
Requirements Are Key  
to Improving  
Taxpayer Compliance**

IRS can use the paid preparer requirements to help achieve its goal of leveraging the preparer community to increase taxpayer compliance; however, the extent to which the requirements will result in improved compliance depends on how IRS uses them. In our March 2011 report, we found that IRS had discussed but not documented a framework for how it plans to develop service and enforcement efforts that leverage the new paid preparer requirements to improve taxpayer compliance. Likewise it had not developed a framework for evaluating the effect of any planned service and enforcement efforts or the effect of the requirements themselves on improving taxpayer compliance. IRS began implementing the requirements before laying out strategies for how to leverage them and measure their impact in an effort to realize benefits sooner.

Without a documented framework to guide its overall effort, IRS may not adequately or effectively identify and collect key baseline data now, modify its strategies to improve outcomes, allocate its resources most effectively given competing priorities, or maximize paid preparers' compliance with the requirements. Furthermore, some members and officials from paid preparer associations stated that the requirements will be worthwhile only if they result in an improvement in taxpayer compliance. The impact of these requirements depends on the compliance of paid preparers who bear the burden of complying with the requirements. Demonstrating to paid preparers that IRS will evaluate whether the requirements improve service to taxpayers or taxpayers' compliance could improve preparers' voluntary compliance with the requirements. In our report, we recommended that IRS document a strategic framework showing how it intends to use the paid preparer requirements to improve taxpayer compliance and assess their effectiveness. IRS agreed with our recommendation and plans to

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complete its strategic plan at the end of July 2011. IRS stated that the plan will detail the overall mission, vision, and goals to ensure return preparer oversight will ultimately achieve improved taxpayer compliance and tax administration.

There are various ways that IRS can leverage the paid preparer requirements to provide better service to taxpayers and ultimately improve taxpayer compliance. For example, according to the RPO Director, IRS plans to develop a comprehensive database containing information on paid preparers and the tax returns they prepare. IRS plans to use information from this database to test which strategies are most effective for improving the quality of tax returns prepared by different types of paid preparers.<sup>14</sup> We have consistently stressed the importance of IRS's conducting compliance research such as this and using research results to identify areas of noncompliance, justify resource requests, and target scarce resources. In addition, given IRS's new strategy for modernizing the way it manages individual taxpayer accounts, IRS could conduct analyses of tax return information and data on paid preparers earlier in the filing season. This would allow IRS to reach out to paid preparers during the filing season to either correct widespread errors among paid preparers or to contact a paid preparer who repeatedly makes the same type of error on tax returns. IRS has also discussed how to measure the effect of the requirements themselves, for example, the effects that requiring continuing education and testing have on tax return accuracy.

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Chairman Boustany, Ranking Member Lewis, and Members of the Subcommittee, this completes my prepared statement. I would be happy to respond to any questions you may have at this time.

For further information on this testimony, please contact James R. White at (202) 512-9110 or whitej@gao.gov. In addition, contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. In addition to the individual named above,

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<sup>14</sup>For more information on the management information system IRS will need to have in order to develop an enforcement strategy based on paid preparer data, see Treasury Inspector General for Tax Administration, *It Will Take Years to Implement the Return Preparer Program and to Realize Its Impact*, 2010-40-127 (Washington D.C.: Sept. 30, 2010).

Jeff Arkin, Assistant Director; Amy Bowser; Maya Chakko; Donna Miller; and Daniel Webb made key contributions to this report.



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Chairman BOUSTANY. Thank you, Mr. White. Mr. Williams, when you were designing the paid preparer program, did you look at any existing programs? We are aware that Oregon—and I think Mr. White referenced the Oregon program and improved results in California, as a result of their plan. There are companies that have worked in this area, and have fairly extensive plans.

Can you describe to what extent you looked at these existing plans?

Mr. WILLIAMS. Yes, Mr. Chairman, we did. And, in fact, we conducted a six-month review of not only what was going on in states, we did a small look at other countries.

We had three sets of national hearings, which—we heard specifically from Oregon and California. We heard from tax practitioners, big companies, small companies. We talked to consumer groups. We sought public comment, we got over 500 public comments that gave us insights into the way in which other states had done it, what had worked, what had not. And we built and designed the program, based on that input and feedback.

Chairman BOUSTANY. Thank you. Did you consider, or give any consideration to certifying some of these programs? In other words, instead of having one plan coming out of your office here in Washington, saying, “Okay, well, Oregon plan works pretty well,” or take, for instance a company like H&R Block, which has a very extensive education program and competency testing. I think there are some differences, from what I understand, in the way they do background checks.

But was there any consideration over at IRS given to certifying those existing programs, to avoid some duplication and perhaps added cost?

Mr. WILLIAMS. Interestingly, we did talk both to H&R Block, we did talk to the folks from Oregon, and others. I have probably had requests for 15 to 20 different, as you called them, certifications.

And as I started to accrue each and every one of them, I realized that we would end up with a patchwork system, where some people would be covered under one standard, and others would be covered under another. And our concern was that there could be consumer confusion, as a result of trying to understand which certification mattered. And tax professionals might, as well.

We have talked to both the folks you’ve mentioned, as well as others, and suggested that we will work with them to ensure that the standards and the minimal competency testing on which we are working is a framework on which they can build. So, to the extent that they are developing their own testing, the federal standard would be the base upon which they could build additional changes, going forward.

Chairman BOUSTANY. I thank you. Mr. White, can you tell us more about how GAO conducted the study, where you referenced the errors that were found? And were they in favor of the tax preparer or the taxpayer? Give us a little more detail on that.

Mr. WHITE. It was—as I said, we created hypothetical taxpayers. We have got a group in our office that can go under cover. And so they represented these taxpayers. One, as I said, was a plumber. The plumber had wage income working for another plumbing contractor, and then also worked some on his own, and so had self-employment income. We reported all of that to the preparers.

Our other case was a hypothetical working mother. She had two kids, she had a job, some wage income from that. But she was fairly low-income, and eligible for the earned income credit. We laid out all the facts to the preparers. We picked 19. They were from various large chains. And, as I said, in all 19 cases there were

some mistakes. In a number of those cases the mistakes were substantial. Some favored the government, some favored the taxpayer. They were—so the underpayments were as large as \$2,000. The overpayments, in 2 different cases, were over \$1,500.

Chairman BOUSTANY. Thank you. For both of you, one final question that I have. Two of the most problematic types of paid preparers are ghost preparers—those who are paid to prepare returns, but do not indicate so on the return, itself—and then also what have been called fly-by-night preparers, who may open up shop for a month out of the year, and then they're gone once the questions arise about the return or the taxpayers audited.

I know it is early in the process, and this is a preliminary hearing to sort of gauge how things are going, and we are going to have to do more to benchmark success. Can both of you give us some indication of how we are going to address those two problems?

Mr. WHITE. One key, Mr. Chairman, is an ongoing process of research. You are absolutely correct. Right now the service does not have a complete picture of how they can leverage paid preparers to improve service to taxpayers and compliance by taxpayers by working through preparers. And it's not a bad thing that they don't have a plan right now for that.

What they need to do is what they have said they are going to be doing, putting together a comprehensive database that will include information about preparers, combine that with information about the tax return those preparers prepare. And that is one vehicle. There are others, as well.

But they need to learn from this sort of data about what the nature of the problem is, develop some strategies, and then collect data, monitor the effectiveness of those strategies, and modify the strategies as they learn more about what is working and what is not working. There are going to be some surprises going forward on this, and so it is going to be a continual process of learning and adjusting.

And it is going to cost some money. It is going to require an investment in this research that I am talking about.

Chairman BOUSTANY. The two states I referenced earlier, that both of you have referenced as well, California and Oregon, is there some experience there that we can learn from?

Mr. WHITE. Well, yes, there is. In the case of Oregon, we looked at Oregon, and it was a challenge to determine exactly what the impact of the Oregon regulatory process was on taxpayer compliance, precisely because Oregon, early on, had not collected good baseline data for comparison.

And so, what we are looking for the Service to be doing, for IRS to be doing now, is collecting better baseline data. That is part of why we think it is important to document the framework they are using, so that the research community has an idea, and can contribute to thinking about the sort of analysis of the program that needs to be done, and that then tells you what kind of data needs to be collected now, so that you will be ready to do that analysis.

Chairman BOUSTANY. I thank you. Mr. Williams, do you want to add—

Mr. WILLIAMS. If I could follow up on that just a little, because that is exactly where we are going with it. We are not jumping to

conclusions about the quickest and easiest way to deal with problematic preparers.

You identified two categories. The first, ghost preparers—in other words, folks who do the returns, but hand them back to the client, and the client signs, saying they did it themselves, those are probably going to be the most challenging.

We are actually testing, this filing season, some statistical methods for identifying those preparers. Now, we may not be able to identify exactly who prepared the return, but we may be able to identify returns that look like they were done by preparers, in which case we are looking at, again, testing strategies to communicate with the taxpayers who had their returns done by these folks, to say, “Hey, did you know your preparer isn’t registered, doesn’t follow the system,” to see if we can tease out the folks that are in that ghost preparer category.

I think there is a broader thing to remember, though, in that as we move through this, and we are doing it in a measured way, there are a lot of professionals out there in their small businesses who are struggling to make sure that they understand what we are requiring them to do, and their requirements. And we need to be very sensitive to them, as we move into the field of trying to enforce and get the compliance dead on.

And so, that is why following GAO’s recommendation, what we have been planning, we are going to do tests to figure out what works and what is most effective and most cost effective to address those issues.

Chairman BOUSTANY. I thank you. And now I turn to the ranking member of the committee, Mr. Lewis.

Mr. LEWIS. Thank you very much, Mr. Chairman. Mr. Williams, I am concerned that the taxpayers we are trying to protect may not know about the new requirements. How will the IRS educate these taxpayers?

Mr. WILLIAMS. Mr. Lewis, that is an excellent point. And in fact, at this point, most taxpayers do not know what we are doing, for a very specific reason. At this point, all that we have done is made sure that people who are preparing returns have a number. And that doesn’t help taxpayers understand very much about who they are going to. What we are trying to do is get the preparers in the system first, make sure they have taken the competency exams we have talked about, and are doing the continuing education.

And we intend, as more preparers actually do that, to launch a nationwide campaign to educate taxpayers about who is available, what it means to be a registered tax return preparer, and to understand that they need to go to someone who is either a registered preparer, a CPA, an attorney, or an enrolled agent to support them, and ensure that they get their taxes done right.

It is just that today we are just starting the program, and I don’t want taxpayers to be looking for more than is there, because it is not there yet.

Mr. LEWIS. Mr. Williams, GAO has said that a database of paid preparers would be available in 2014. Why will it take three years?

Mr. WILLIAMS. It is—it will take until the end of 2013 or 2014 before we make that available, and here is why. We have about

700,000-plus people who have just registered with us. Many of them are CPAs and attorneys and enrolled agents, but somewhere between 400,000 and 500,000 of them are unenrolled preparers who are going to have to take that test and go through the background checks and so on. We want to give them time to do it. These are small businesses, these are people who may have been in practice for a number of years.

I don't know about you, but most people sort of remember the last time they had to take a big test. And we are very concerned that there is anxiety about test-taking, and we want to give them a chance to take that test, to prepare for it, and give them some time.

So, for the next two years, they will have the flexibility to take the test and repeat it, if necessary. We are going to work with the community to make sure that they have educational opportunities and give them some time before we start publicizing and pushing the full database. We want to get them into the database first.

Mr. LEWIS. All right. Mr. Williams, a witness on the next panel recommends that the IRS establish a central telephone number and database for complaints. What are your thoughts on this recommendation?

Mr. WILLIAMS. Actually, we are doing that now. We are developing what I will call a referral process. I go to forums around the country and talk to thousands of tax preparers. I was just at one yesterday in Dallas. And they will come up to me and say, you know, "I know this person down the street who is working out of his garage," or, "I am cleaning up after—he does returns, and then the clients have problems."

So what we are developing to capture that is a system of collecting that information, putting it in a central place, and actually starting to build a process to identify and address each of those concerns directly, because we think it is important. Those are one of our best sources of referrals, and that is a good place to start, if there are problems.

Mr. LEWIS. Yes, thank you very much. Now, Mr. White, how would you grade the IRS on the preparer plan or strategy so far?

Mr. WHITE. What we have said in our report is that they have done a pretty good job implementing this so far. We had one recommendation, and that was that they actually document this framework. And I call it a framework, rather than a detailed plan right now, because this framework is going to evolve over time.

But we think it is important that that be documented, because one of the keys to success of this whole effort is paid preparer buy-in. IRS is looking to work with paid preparers to help taxpayers get better assistance than they've gotten in the past, and to file more accurate tax returns. So it is a matter of working with them, enlisting their help in this. That is the ultimate goal of this.

Mr. LEWIS. Mr. White, your testimony noted that the IRS planned to make available a database of paid preparers in 2014. This seems so far away. Is this a reasonable time line?

Mr. WHITE. I think the way Mr. Williams described it is reasonable. I guess what I would add to that is one thing—since this database is going to be available to the public, and the intent is

it be used by the public to find preparers who are registered, it is very important that it be user friendly.

And so, I think testing the database, testing how the access to the database works, monitoring the way it is used, once it is set up, to determine whether, in fact, it is user friendly, is as user friendly as it could be.

Mr. LEWIS. Thank you very much. Thank you, Mr. Chairman.

Chairman BOUSTANY. I thank the gentleman. Ms. Jenkins, you are recognized.

Ms. JENKINS. Thank you, Mr. Chairman. Thank you for being here.

In your written testimony, Mr. Williams, you stated that the IRS sent out more than 10,000 letters to tax preparers with completed returns containing common errors. The letter included an enclosure that reminded them of their responsibility to prepare accurate returns. The IRS also personally visited 2,500 of the preparers who had received the letter.

First of all, can you share with us what some of the common errors were that you found on the tax return? Secondly, has the IRS set any benchmarks for improvement regarding those common errors that were currently found? And then, finally, what sort of expectations might you have for this program to accomplish in regards to these types of common errors?

Mr. WILLIAMS. Sure. So, a couple things. First of all the most common error, and the one on which we focus a great deal of our effort, is the earned income credit. As you've heard probably in other hearings, and mentioned earlier, there is a large, erroneous payment problem with the earned income tax credit. And it is the result of a variety of things. It is people, taxpayers themselves, who don't understand the rules and are not sure how to prepare, or their preparers, to do this. It is a result of preparers not understanding the rules, and not being precise in following the requirements.

And so, much of what we see is an erroneous claim for the earned income credit. And so one of the targets, in terms of identifying preparers and those that we sent letters to, is exactly that kind of error, refundable credits, in particular.

In terms of establishing benchmarks, the initial two years of doing those visits showed us that—we are building some data that tells us how well those preparers are doing. We are actually following them in subsequent years, to see how well they do with regard to the accuracy of the returns they prepare in the future. I think we are going to learn from that, whether there are better ways of identifying problematic kinds of returns.

And you mentioned the visits, as well. Those visits take time. They can be intrusive. And my objective, using the data that we are going to get from the return preparer initiative, is to make sure that we are not visiting someone if a letter that reminds them they need to pay more attention to a particular area is sufficient to get them to improve their compliance.

In other words, we need to figure out the best way to encourage preparers to comply before we start knocking on their doors and doing some of the other more intrusive things that we can do to get their attention.

Ms. JENKINS. Okay. One of my concerns with the implementation of this return preparer initiative are the compliance and administrative costs. And, as our chairman mentioned in his opening statements, according to the GAO, the new requirements are estimated at cost per payer as 51 to 77 million, annually, in registration fees alone, and that didn't include, as he mentioned, the cost of compliance and the testing and the ongoing education requirements. That ranges from \$20 to \$300 per course.

According to the March 2011 GAO report, the IRS is planning to conduct a first review of the PTIN registration user fee in the summer of 2012.

So, for Mr. Williams, have you made any progress on the review, and can you share any results? Do you anticipate that you will be able to lower these costs? And what is your reasoning for requiring registration on an annual basis, rather than, perhaps, on an every-three-year.

Mr. WILLIAMS. We have begun the review. We haven't finalized it. We are basically entering the first half of our second year in the program. I think it is premature to tell you that I can lower the fee. I can also tell you, though, that is our objective. We are very sensitive to imposing costs on small businesses.

The one thing to keep in mind, the PTIN designation in all of this actually attaches to the individual, not the business. So it becomes a credential that he or she may carry with him or her wherever they go. Our objective in all of this is to ensure that the program is funded at an appropriate level through the user fee.

And I talk to preparers about this, because it means something that I don't think they have thought about, which is we owe them something for this service. We owe them service, we owe them a level playing field. So your discussion about compliance, I think is very important. When I talk to the small businesses who are doing preparer work, their concerns are that they have got competitors down the street from them who are not following the rules, who are preparing poor returns, hurting taxpayers, and that they are not on a level playing field.

And so, one of our objectives with that user fee is to figure out the most cost-effective way to improve compliance with people who are either not complying with the rules, or among those who are, but are really not paying attention, figuring out cost-effective ways to get them to do better in their practice. And that is part of the experimentation and research that Mr. White was talking about, figuring out whether there is a way. I will give you one example.

The continuing education requirement does impose some cost on preparers, but I can also see a scenario where one of the ways in which we might improve people's compliance—in other words, the accuracy of their returns—is saying, "Hey, we have taken a look at some of your returns. You are having a problem in this area. Some of your continuing education should be directed to this kind of thing," so we don't have to impose penalties on those folks. We need to be looking at ways of getting them the right education to improve their service to the taxpayer.

Ms. JENKINS. Okay, thank you. I yield back. Thank you, Mr. Chairman.



Chairman BOUSTANY. Thank you. I know, Mr. Becerra, you have had an interest in this issue for quite a while, and you are recognized for questioning.

Mr. BECERRA. Thank you, Mr. Chairman, and thank you for holding this hearing. I appreciate that very much. It is a follow-up on some good work that has been done in the past. And I would like to begin my five minutes by first recognizing and commending Commissioner Shulman and all the folks at the IRS, the professionals at the IRS. I also want to commend the folks at GAO who have made it possible for the IRS to work with you to try to figure out how to best navigate this.

I think this was long overdue, but I appreciate the way that you have handled this, more than anything else because it seems like most of the paid tax preparer community is on board, which is not typically the case when it comes to wanting to deal with the IRS. And so I think you are doing something very good here, and not just good, but right. And I hope that you continue moving methodically but with all due speed, so that we can implement regulations that most Americans would say they wish they had in place—or we had had in place for quite some time.

I can't tell you how many Americans have come up to me in the past and said, "You know how much money I lost because I went to this guy, and he said he could prepare my returns, and I was going to get X amount of money back, and I was really happy, low and behold, then the IRS starts auditing me?" It just goes on and on. And these are folks who are middle class, modest-income families for whom a \$500 bill to have these forms prepared was significant, but then to have the IRS breathing down their neck because they didn't do it right, is even worse. So, thank you very much for what you are doing.

Mr. White, let me begin by asking a couple questions. I believe the IRS had initially estimated that there would be somewhere between 900,000 to 1.2 million paid tax preparers in this universe of folks who did tax returns. So far we have gotten over 700,000 preparers who have come forward and registered. Is it your belief that there is still a universe, a significant universe of people out there, who are performing tax preparer services for money, who have not yet come forward to register?

Mr. WHITE. Yes, there are. I don't know how many. One of the problems in this area, before this regulatory effort started, was IRS did not have a count of the number of paid preparers out there. They simply didn't know. People didn't have to use a unique identifying number when they signed a tax return. They could use a variety of numbers.

So, this gives them more information about the preparer community than ever in the past. And it is not just the number that is important; it is really information about the types of preparers, how they comply, how they fill out returns, the accuracy of those returns. Part of the vision for the future here, I think, is getting to a point where IRS, almost in real time, by analyzing the data coming in, would be able to identify preparers that are preparing inaccurate returns, communicate with them during the filing season, and get the errors fixed, so that more taxpayers don't run into the sorts of problems you have identified.

Because you are exactly right. If you underpay your taxes, IRS is going to come after you and charge you penalties, and you are in worse shape.

Mr. BECERRA. Yes. And so, what we want any American taxpayer or any consumer who is watching or listening to this hearing to understand is that not every person who professes to be a preparer of tax returns with the talent and the experience to do it has yet come forward to the IRS to identify themselves.

And so, as Mr. Williams identified them as ghost tax preparers, I would call them black marketeer tax preparers, because they have now had a chance to come forward as many of those professionals—and I applaud each and every one of those 700,000-plus professionals who have stepped forward and registered, because essentially what they are saying is, “I am willing to live by this new regime, to make sure that consumers understand that I came forward before the IRS to tell them I am going to hold myself out as someone who can prepare your returns and deserve to be paid to do this.”

And so, for all the 700,000-plus who come forward, I hope we can continue to move diligently to get the other folks who want to participate and maybe are not totally familiar with this, or maybe made a mistake or omission when they first tried to register and that is why they are not yet incorporated into this.

I hope we also do some work, as was based on the questions that were asked earlier by the chairman and the ranking member, on educating the consumers so that they understand what is going on here. We are trying to help them be able to be better shoppers of those who are going to give them a professional service.

I often cite the case of notary publics. I am from Los Angeles. There are lots of immigrants in LA. In a lot of countries, a notary public is tantamount to an attorney. And so they can perform some of the same services that attorneys do in their home countries. They come here, they see these notary publics, they hold themselves out as being able to provide legal services. They pay these notary publics a ton of money. Before you know it, these individuals find out that these notaries couldn't do anything for them, but they are out thousands of dollars.

That notary public scam that goes on by that small universe of fraudulent notary publics should not be what we find happens here with paid preparers. We have had a lot of good paid preparers who have come forward. And they, as professionals, deserve to know that we, as the Federal Government, the IRS, will move forward diligently to make sure that we respect those who came forward as professionals, and bring in as many as we can as quickly as possible who want to be professionals, but then go after with a vengeance those who are the black market preparers.

Mr. Chairman, thank you for the time.

Chairman BOUSTANY. I thank the gentleman. Mr. Paulsen, you are recognized.

Mr. PAULSEN. Thank you Mr. Chairman, also, for holding the hearing.

I want to follow up a little bit on that line of questioning, just to ask Mr. Williams, you know, will taxpayers be able to look up

a particular PTIN holder's history? I mean is that something a taxpayer is going to be able to look up themselves?

For example, let's say that Return Preparer A has been fired from H&R Block or some company for stealing taxpayer information, or something similarly egregious. Does the employer have a duty at that point to inform the IRS? Or will the IRS do anything about it? And will taxpayers be able to find out that information from an accessibility standpoint?

Mr. WILLIAMS. Mr. Paulsen, we will make available through this database the information that we can make public about preparers that we possess. And, by the way, when I talk about this database, it will include the registered return preparers we are talking about here. But we also intend to list CPAs, attorneys, and enrolled agents who want to be part of that, and we are going to work very closely with those communities, to make sure that taxpayers understand the differences among them.

What we will not have access to—and I am not sure that we could legally put on the database—would be information about disputes between an employee and an employer. That would not be something that we would know about.

What we would know about, though, is if there were problems with the tax preparer's work, and if that preparer had been disciplined. And if that preparer had been disciplined in an ethical sense, under the office of professional responsibility which oversees ethical practice, that is public information. It occurs today with regard to CPAs, attorneys, and enrolled agents. We actually publish that. And that information would appear on the database, as well.

Mr. PAULSEN. Okay. And then, in terms of the accessibility of the information and making it available to the public, it is my understanding—and I don't think we covered this yet, Mr. Chairman—but the IRS plans to have information on those that have registered for the PTINs available online later this year. Can you give us some more specifics?

Mr. WILLIAMS. Not later this year.

Mr. PAULSEN. So is that going to 2014?

Mr. WILLIAMS. That is going to be the one that we will deploy toward the end of 2013.

Mr. PAULSEN. Okay.

Mr. WILLIAMS. We will have a full registry you can look up.

Mr. PAULSEN. Can you give us some more specifics on what will be on that website? For example, is it going to list just the name, the business, the address, the—and the profession, whether a CPA, they're an attorney, they're an enrolled agent?

Mr. WILLIAMS. You just covered most of what is going to be on the database.

Mr. PAULSEN. Okay.

Mr. WILLIAMS. In other words, the name, the contact information that they want us to provide, the credential that they have received, and we will also spend some time on that database having an explanation of what it means to be a registered return preparer, a CPA, an enrolled agent, or an attorney, so that folks understand the distinctions.

If there has been a disciplinary proceeding that is public, that will also be noted on the database. So it will be a place where you

could look up someone in your area, if you wanted, so you will be able to search it by geography, for example, or you may want to search by credential. It isn't going to provide intimate details about the preparer's practice, but basically that they have been admitted, and here is how you can contact them.

Mr. PAULSEN. So you anticipate a search function, as you mentioned?

Mr. WILLIAMS. Absolutely.

Mr. PAULSEN. Okay. And you wouldn't need the name of the return preparer to run a search? You could search it by geography?

Mr. WILLIAMS. That is right. If you had just moved to someplace and you wanted to figure out, "I need someone to prepare my taxes," you could look at somebody in that jurisdiction, or even that zip code, for example.

Mr. PAULSEN. Okay. And, Mr. White, let me ask this, because I think the subcommittee in the past has explored the Tax Code's growing complexity. And certainly the full committee has brought up this subject, as well, in terms of the complexity and fairness, simplicity.

But the Taxpayer's Advocate has testified before the committee just that there have been something like 4,400-plus tax law changes, just in the last 10 years alone, and Americans spent an estimated \$163 billion trying to comply with the Tax Code. Would you agree that the code's complexity, overall, is what is playing a role in some of the problems that the paid return preparer program is designed to address in the first place?

Mr. WHITE. Yes. That is a point we have made repeatedly, the complexity of the Tax Code, and particularly changes to the Tax Code. When there is a new provision, that is something that taxpayers then have to relearn, and preparers have to relearn.

But it confuses people about what their tax obligations are, and that can lead to unintentional non-compliance. Complexity can also help hide intentional non-compliance, because it is harder to find, with the Tax Code and tax forms being as complex as they are.

Mr. PAULSEN. Well, Mr. Chairman, I think this just goes to the heart of the discussion we are having today is, you know, we will often, I think, have a review of some of these new layers of programs that get added on.

But hopefully the committee is going to further address the complexity issue, so that individuals that end up relying on paid preparers or tax preparing software won't have to do that, and we can make it a lot simpler and a lot more confident, and then people won't have to worry about the black marketeers or the ghost writers, et cetera.

So, with that, I yield back.

Chairman BOUSTANY. I thank the gentleman. We—as you know, we are doing tax reform. And the complexity of the code is a huge issue. And, as the IRS comes to us for more resources and the complexity grows, at some point we have to reach a balance on all this.

Mr. Marchant, you are recognized.

Mr. MARCHANT. Thank you, Mr. Chairman. One of my large concerns has been in the past that we have had testimony before the committee that in the last few years alone \$106 billion has

been refunded to taxpayers, and they were refunded and they were improper refunds. Money was claimed, it was returned. We have heard that a big amount of those mistakes were done by tax preparers. And many of the false claims were actually, in my belief, instigated by the preparer, and not the taxpayer.

Is there—has there been any kind of a database developed where you are looking at chronic—where you are looking at people that have been—let's take the earned income tax credit. Are you tracing back farther than just the person who was affected by the return, and are you aware, in the case of fraud, where you are going after the taxpayer for fraud, is there a further step being taken? Are you aware of who the preparer is?

Mr. WILLIAMS. In fact, yes. We actually have a whole program. We were talking earlier about the letters and the visits that we have been doing for the preparer community. And part of that has actually been driven by our experience at identifying the preparers that are perpetuating bad earned income credit returns.

We literally will identify a set of people—taxpayers who have filed returns that are erroneous. And then you look at them, and you realize they were all done by the same preparer. Or, in the case of ghost preparers, as we have been talking about earlier, no one has signed the return, but there are enough patterns in them that suggest they were all done by the same person. And so we actually will, at that point, try and zero in on that preparer, and actually address the fraud that they are perpetuating.

That has been going on for a couple of years. But I think with this program we will have a lot more information to figure out who is doing what, how much they are doing, and where they are, and be better at effectuating compliance to help ratchet down on those erroneous payments you were talking about.

Mr. MARCHANT. Is the \$50 fine—is that the maximum fine for anyone that is caught—

Mr. WILLIAMS. No. No, no, no. First of all, the fine is levied by returns. So it adds up over time. It is interesting you had mentioned the penalty issue, because we are looking at penalties across the board. We don't think that is the first solution to every problem. But in cases like this, the National Taxpayer Advocate has recommended more significant penalties with regard to these kinds of erroneous fraudulent claims, and we are actually considering that, as well.

Mr. MARCHANT. And have you had discussions with—I am sure there are some—have you had any discussions about possible criminal penalties, or charges? And have there ever been criminal penalties or charges brought against a preparer—

Mr. WILLIAMS. Absolutely.

Mr. MARCHANT [continuing]. That has an operation going?

Mr. WILLIAMS. Absolutely. The Criminal Investigations division at the IRS actually does investigate and put together cases that are presented to the Department of Justice. And we do shut down preparers, through the criminal process, for perpetuating fraud.

Mr. MARCHANT. I would suggest to you that those may have been too low-profile, and in some instances a higher-profile case that the media might pick up in certain areas—Congressman Becerra and I have many of the same concerns. I have many ghost

operations in my district, people that are literally going out and grabbing people off the sidewalk and say, "Hey, do you know I can get you this much money? Sign here." They give half of it back, and these are criminal operations.

And—but I don't know that I have ever picked up the Dallas Morning News and read that someone was being prosecuted. So I would just suggest to you that if you get a case like that, it might be helpful to incorporate the media into getting the word out among these preparers that there is a penalty to pay for this.

And I appreciate your efforts in this kind of enforcement. Thank you.

Mr. WILLIAMS. Thanks.

Chairman BOUSTANY. I thank the gentleman. Mr. Reed, you are recognized for questioning.

Mr. REED. Thank you, Mr. Chairman. Thank you for the testimony today, to the witnesses.

I come from a district in New York. A lot of people think New York is a big city all the way across the state, but the part of my district—my part of New York is a rural area. We are a agricultural-based, high-tech-centered area. But a lot of rural space there.

So, I am interested in your thoughts from either of you as to how to address the logistics of complying with the testing and the locations, the physical location. How are we going to address the rural areas to make sure that this requirement is not an excessive burden on them?

Mr. WILLIAMS. Yes, that is actually a great question, because it has been one of our concerns. We contracted with a vendor to deliver the testing that will open with 270 sites around the country. We have talked to them about looking at the population distribution to understand where we can place the sites.

We have also informed them that if we start to see areas—yours is not the only one; I went to high school in Montana, and of course, you know, there are a couple big cities and then lots of space in between—there are people in those areas who need access to the testing, and we need to make sure that if we can't get them, if it is unreasonable, that we find another way to deliver it.

For example, a mobile van, something that will enable people to take those tests in a reasonable way.

One of the other things we are trying to do, because people have life circumstances, even if travel is a bit of an issue, but they also have other things going on, as I mentioned before, is to give people enough time to take the test. So, for anybody who is in our system now who has registered since the beginning—the end of last year, they will have two years to take and pass the exam. So that if there is a way to work it into their schedule, or something like that, they will be able to do it.

And we are going to monitor this very closely, to make sure that if people are having problems getting access in your district or in other areas, that we find a way to address that.

Mr. REED. Has there been any discussions or thoughts about using technology, electronic, Internet, any—that type of vehicle?

Mr. WILLIAMS. Initially, that was my solution to the whole thing. We will do it online, and you could do it from home.

The problem we have discovered—and there is a whole field of testing out there that I wasn't aware of before I started this—is ensuring that the individual who is on the other end of that transaction is actually who they say they are.

Mr. REED. Sure.

Mr. WILLIAMS. We work with a company called ProMetric. They administer a lot of different kinds of exams. They administer between 9 million and 11 million nationally and internationally every year, and they do it for a variety of different people. And they have given us some insights into how test-taking can be compromised, I think would be the nice way to put it.

Mr. REED. Okay.

Mr. WILLIAMS. And so, they encouraged us not to go on the online method. It would help in the circumstance you are describing, but would also leave us open to a lot of potential—

Mr. REED. Abuse. Okay. Thank you. With that, I yield back.

Chairman BOUSTANY. I thank the gentleman. I would like to thank you both for being here today, for your testimony, for the work you are doing to make this program successful. Please be advised that Members may have additional questions that they will submit, which will be part of the record, as well as any answers you provide.

So, thank you, gentlemen, and we will now proceed with our second panel of witnesses.

[Pause.]

Chairman BOUSTANY. Welcome to all of you, and thank you for being here today. I will introduce our panel, our second panel.

First we have Ms. Kathy Pickering, who is vice president of government relations, and executive director of the Tax Institute at H&R Block.

Secondly, we have Ms. Patricia Thompson, who is chair of the tax executive committee for the American Institute of Certified Public Accountants.

Thirdly, Mr. Paul Cinquemani, who is director of member services, business development, and government relations for the National Association of Tax Professionals.

Next, Mr. Lonnie Gary, enrolled agent in USTCP, chair for the National Association of Enrolled Agents, government relations committee.

And Mr. David Rothstein, a researcher for Policy Matters Ohio, and also a research fellow at the New America Foundation. Again, I want to thank all of you for being here today. You will each have five minutes to present your testimony with your full written testimony submitted for the record.

Ms. Pickering, you may begin.

**STATEMENT OF KATHY PICKERING, VICE PRESIDENT, GOVERNMENT RELATIONS, & EXECUTIVE DIRECTOR, THE TAX INSTITUTE, H&R BLOCK, KANSAS CITY, MISSOURI**

Ms. PICKERING. Chairman Boustany, Ranking Member Lewis, and Members of the Subcommittee on Oversight, thank you for inviting H&R Block to present our views on the IRS return preparer initiative.

We commend David Williams and the IRS return preparer program office for their efforts to create an efficient and effective regulatory program for the tax preparation industry. We support the IRS in this initiative. In my comments today I will provide the context for why the issue of tax preparer regulation is vital to H&R Block, and address our concerns and our recommendations for improving this important regulatory initiative.

H&R Block is the leading provider of tax preparation services. We have about 97,000 tax preparers in 11,000 offices, 40 percent of which are small business-owned. Many are located in rural areas. While we do support the overarching goals of the VPI program, we have a few concerns.

First, the competency exam has created redundancies and unnecessary costs for H&R Block, totaling over \$20 million. H&R Block's process for training and quality control has been the industry gold standard for 39 years. Our tax preparers, at a minimum, must take our 84-hour basic income tax course, receive a passing grade, pass a criminal background check, and complete at least 24 hours of continuing education each year. The IRS program will only require 15 hours of continuing education annually.

It is important to note that when Congress debated the Taxpayer Bill of Rights of 2008, there was bipartisan support for H&R Block's competency testing to be certified for IRS purposes. H&R Block strongly recommends that the IRS develop a program review process to certify proven programs like ours, or those in California and Oregon.

Our second concern is that compliance, enforcement, and measurement programs have yet to be defined. Without this, it will be impossible to know which actions did or did not result in improved compliance. Given the considerable costs of implementing the return preparer program, we hope to see that the benefits of this program are commensurate with the expense.

Finally, H&R Block would like to work with the IRS to create a group or mass registration renewal and payment process. A group process would save time and money for the IRS and tax preparers.

In conclusion, I would like to thank you for the opportunity to provide H&R Block's perspective and recommendations. We commend the IRS for creating the return preparer program office. This was an important step in strengthening the relationship between the IRS and the tax preparation industry. David Williams's experience and leadership will ensure that the initiative is ultimately successful.

Despite our concerns, we remain committed to the goals and objectives of the program. We look forward to continuing to work with the IRS, to raising the standards of professionalism and integrity in our industry, and we are confident that the American taxpayer and the tax administration system will benefit from our collective efforts. Thank you.

[The prepared statement of Ms. Pickering follows:]





**Written Testimony of Katherine Pickering**

**Executive Director of The Tax Institute at H&R Block and Vice President of Government Relations**

**Before the House Committee on Ways and Means**

**Subcommittee on Oversight**

**Hearing on IRS Return Preparer Initiative**

**July 28, 2011**

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Chairman Boustany, Ranking Member Lewis, and Members of the Subcommittee on Oversight:

Thank you for inviting H&R Block to present our views on the IRS' Return Preparer Initiative.

We commend Commissioner Shulman, the IRS Return Preparer Program Office, and the IRS staff for their efforts to create an efficient and effective regulatory program for the tax preparer industry. We support the IRS in their initiative to increase taxpayer confidence and raise the professional and ethical standards of the tax preparation profession while also increasing taxpayer compliance.

In my comments today, I will provide the context for why the issue of tax preparer regulation is vital to H&R Block, and then I will address the concerns that we have at present and our recommendations for improving this important regulatory initiative.

**About H&R Block**

Henry and Richard Bloch founded H&R Block, Inc. in 1955. Since then, we have prepared 575 million income tax returns worldwide. We prepare one in every seven U.S. tax returns, and file one in every five Earned Income Tax Credits.

Today, H&R Block is the leading provider of tax preparation services. Approximately 24.5 million tax returns are prepared each year by H&R Block's 97,000 tax preparers in 11,000 offices or through its digital solutions. Of these 11,000 offices, 3,000 are located in rural areas. In each of your congressional districts, we have, on average, 37 offices, 12 franchisees, and 323 tax return preparer jobs.

We have been committed to training and quality from the beginning. As far back as 38 years ago, Henry Bloch testified on tax preparer integrity and quality. He addressed issues such as competence, confidentiality, advertising practices, and the stability of tax preparation firms.

The IRS has said, "The vast majority of return preparers are honest and reputable." We agree. It is difficult to measure the degree to which incompetence or fraud afflicts the tax preparer industry. But the 60% of American taxpayers who seek assistance deserve some assurance of competence, which is why we support meaningful standards for tax return preparers.

#### **H&R Block's Commitment to Training and Quality Control**

H&R Block's process for training and quality control sets the gold standard for the industry. Our tax preparers, at a minimum, must take our basic income tax course, receive a passing test grade, and pass a criminal background check, to be eligible for hiring. The basic tax course consists of 84 hours of classroom instruction plus homework, quizzes, a mid-term, and a final exam. To be rehired, our professionals take at least 24 hours of continuing education each year. By comparison, the IRS program will only require 15 hours of continuing education for registered return preparers. H&R Block tax preparers are trained on systems, policies, and procedures, which require an additional 20 – 35 hours of training annually.

Our tax preparers work with a state-of-the-art computer program that checks and double checks calculations, theory, and accuracy. There are approximately 10,000 diagnostics in our software that warn tax preparers that there may be something to review, error diagnostics that won't let the return be filed until corrected, and other diagnostics that check all of the IRS error codes. Our electronic filing rate was well over 90% even before the mandate to electronically file tax returns was implemented this year.

In addition, our tax preparers have access to The Tax Institute at H&R Block. This group is the company's independent research division that provides objective insights and analysis on the real-world implications of tax policy and tax proposals on individuals and small businesses. The Tax Institute supports our tax preparers, including on-demand help for client-specific situations and customized research of complex tax questions.

Finally, H&R Block conducts rigorous compliance and performance integrity examinations year-round. These exams are focused on identifying and addressing suspected tax preparation deficiencies and other related concerns. We have made substantial improvements in our EITC training and compliance effort; so much so that the IRS has acknowledged our results.

#### **First Year of Return Preparer Regulations**

In the first year of implementing the Return Preparer Initiative, the main focus has been on enabling our tax preparers to register with the IRS in order to receive their PTIN (Preparer Tax Identification Number) by the start of filing season. We organized "registration parties" which entailed bringing tax preparers into the office, providing computer systems and internet access to the IRS on-line system, providing a corporate credit card to pay \$64.25 for the registration fee, and providing overall training and education on the IRS Return Preparer Initiative. Additionally, we invested significant time and money into modifying our payroll and human resources systems, as well as our tax preparation systems, to require the PTIN so that we could implement our internal controls.

We're proud that we were able to register the majority of our tax preparers by the start of the season. And while there were challenges with the IRS' systems, as is to be expected at the start of any new program, we appreciate David Williams and the staff of the Return Preparer Program Office ("Office") for recognizing the challenges that the industry was facing. The IRS implemented fair rules that allowed for a reasonable transition period for preparers to obtain a new PTIN.

#### **H&R Block's Concerns With the Return Preparer Initiative**

While H&R Block supports the Return Preparer Initiative and the work of David Williams and his team, we have several important concerns about the current implementation of the initiative.

1. The IRS competency exam is redundant to H&R Block's program
2. There is no clear success measurement for taxpayer compliance
3. There is no defined compliance and enforcement program
4. Late decisions impact the filing season
5. Group registration is not an option

**First: The IRS competency exam is redundant to H&R Block's program**

Testing

Unfortunately, the IRS has informed us, as well as other reputable programs such as the one developed by the Oregon State Board of Tax Practitioners, that it will not certify or credential our program. As we mentioned earlier, H&R Block already has an extensive training and testing program for its tax preparers, and it includes criminal background checks. Our program, which is built into the fabric of our company and complies with all existing laws and regulations, already exceeds the new IRS requirements. We must continue administering our own program because it is critical to our business and our reputation.

When we provided our support for the Return Preparer Initiative, we assumed that our world-class training and testing program would be accepted by the IRS, and that H&R Block's certified tax preparers would be waived from the IRS Competency exam. We also point out that when Congress debated the Taxpayer Bill of Rights of 2008, there was bipartisan support for H&R Block's competency testing to be certified for IRS purposes. The redundant testing and background exams are unnecessary and result in duplicative and burdensome costs that will be passed on to taxpayers.

Cost

H&R Block estimates it will cost over \$20 million to conduct duplicative testing and background checks with the IRS.

Item	Cost per preparer	Approximate cost for current H&R Block associates
PTIN	\$64.25/year	\$6.2 million annually <sup>1</sup>
Competency Exam	\$100 to \$125 per exam	\$8.9 million <sup>2</sup> to \$11.1 million <sup>3</sup>
Fingerprinting	\$60 to \$90 per set	\$5.8 million <sup>4</sup> to \$8.7 million <sup>5</sup>
Continuing Education	Unknown	Unknown

<sup>1</sup> 97,000 x \$64.25 = \$6,232,250 annually

<sup>2</sup> 89,000 x \$100 = \$8,900,000

<sup>3</sup> 89,000 x \$125 = \$11,125,000

<sup>4</sup> 97,000 x \$60 = \$5,820,000

<sup>5</sup> 97,000 x \$90 = \$8,730,000

Travel to testing site	Unknown	Unknown
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This does not factor in the cost of continuing education or travel to the testing site. H&R Block has approximately 3,000 rural offices and 170 tax preparers in international offices. For tax preparers in rural, remote and international offices, access to testing sites will be more challenging, and these individuals will likely incur substantial travel expenses in order to take the exam. This could be especially burdensome for international offices serving U.S. military servicemembers and their families.

Requiring H&R Block to invest \$20 million in redundant fees is unfair and penalizes a company and thousands of tax preparers who are already meeting or exceeding IRS stated goals. More important, the cost of this redundancy will be borne by taxpayers who will receive no appreciable benefit.

**Recommendation:** H&R Block strongly recommends that the IRS develop a program review process for accepting and certifying proven programs such as H&R Block's. Because we employ between 25% to 33% of all tax preparers subject to testing, it is in the best interest of taxpayers to keep programs that have a proven record of success.

**Second: There is no clear success measurement for taxpayer compliance**

While one of the goals of the program is to increase taxpayer compliance, the IRS has not yet provided a framework for how the Return Preparer Initiative will improve taxpayer compliance. Likewise, it has not defined how it will evaluate progress toward this goal. This concern was extensively documented in the March, 2011 GAO report, "IRS Needs a Documented Framework to Achieve Goal of Improving Taxpayer Compliance."

**Recommendation:** H&R Block recommends that the IRS define its measurement program prior to the finalization of the competency exam and continuing education requirements. In the absence of clearly defined objectives, it will be impossible to know which actions did or did not result in improved taxpayer compliance. Given the substantial expense of implementing the Return Preparer Initiative, it is imperative that the IRS demonstrate that the benefits of the program are commensurate with the expense.

**Third: There is no defined compliance and enforcement program**

The tax preparation industry is highly competitive. The government must not inadvertently create an uneven playing field either 1) through a lack of a compliance program or 2) through an ill-defined or subjective compliance and enforcement program. Given the lack of a defined compliance and enforcement program, it remains unclear how the IRS will identify individuals who prepare tax returns for others but who do not sign the returns or otherwise circumvent the new requirements.

Conversely, the fear of subjective or inconsistent enforcement, which could result in severe financial preparer penalties, may cause many well qualified tax preparers to end their careers. This would be extremely unfortunate for both the tax preparers, as well as for taxpayers, who have built relationships with their trusted professionals over many years.

In addition, there are two key groups of tax preparers that are not subject to most of the requirements of the Return Preparer Initiative; “supervised preparers” and volunteer preparers.

Supervised preparers complete tax returns under the guidance of an enrolled preparer, such as an Enrolled Agent, CPA, or attorney. Although supervised preparers are required to obtain PTINs, it is the enrolled preparer’s PTIN that is actually used to “sign” the return. Thus, supervised preparers have no visibility with the IRS.

The community served by the Volunteer Income Tax Assistance (VITA), Tax Counseling for the Elderly (TCE), and Low Income Taxpayer Clinic (LITC) programs is, for the most part, a vulnerable group who relies on volunteer preparers for assistance and assumes that there is a minimum level of competency and integrity. However, volunteer preparers are likewise exempt from testing and continuing education requirements. Nor are they required to obtain a PTIN. Thus volunteer preparers, too, have no visibility with the IRS.

**Recommendation:** H&R Block recommends that the IRS clearly define its compliance and enforcement program, the implementation timeline, and the transition rules/guidelines for bringing preparers into compliance. We also recommend that the IRS create a program for monitoring the work of supervised and volunteer preparers. Lastly, we recommend that volunteer preparers should also be required to obtain a PTIN. Because they’re doing the work on a volunteer basis, the fees could be waived by the IRS.

#### **Fourth: Late decisions impact the filing season**

The new requirements have generally been released later than the IRS originally anticipated. For example, the release of the competency exam was originally scheduled to occur before January 2011, but it may not be available until October 2011. Uncertain and moving deadlines as the new requirements are implemented have been a challenge for H&R Block and the rest of the tax preparation industry because they do not allow sufficient time for us to update our systems, train our tax preparers, and prepare our offices in time for the start of the tax season.

While we understand that it is difficult to quantify the exact cost of a new program, the tax preparation industry needs to have some level of certainty and forewarning, so that appropriate business and operational planning can be completed. For example, we are less than six months away from the start of the 2012 filing season, and we still don’t know what the exact costs of the competency exam and fingerprinting will be. Also, the continuing education requirements are scheduled to go live in January, and we don’t know for sure if the IRS will accept our continuing education program; nor do we know how much it will cost to certify our education programs.

**Recommendation:** H&R Block recommends that decisions such as fees and timing for new and additional components of the return preparer requirements must be finalized at least one year before the start of a new tax season.

#### **Fifth: Group registration is not an option**

The IRS's online PTIN application process currently is available only on an individual basis. In the first year, the process was difficult for some applicants to navigate and the IRS also experienced difficulties processing a backlog of paper applications.

**Recommendation:** We would like to work with the IRS to create a group or mass PTIN registration, renewal, and payment process that would simplify the administration of the new requirements for any organization that employs 100 or more tax preparers. Because H&R Block comprises almost 14% of the total return preparer population and PTINs must be renewed on an annual basis, a group process would save time and money for the IRS, H&R Block, and other large employers in the tax preparation community.

**Conclusion**

Thank you for the opportunity to provide H&R Block's perspective and recommendations. We commend the IRS for moving forward aggressively to implement the Return Preparer Initiative. Creating the Return Preparer Program Office was an important step in strengthening the relationship between the IRS and the tax preparation industry. David Williams was an excellent choice as the director of the Office. His significant experience, strong leadership, and willingness to work with our industry will ensure that the initiative is ultimately successful.

Tax season 2012 begins in six months and there is still a great deal of uncertainty regarding fees, the upcoming competency examination, and continuing education requirements. The uncertainty makes business planning difficult for all tax preparers. We look forward to collaborating with the IRS this year to ensure smooth implementation of the new requirements with little or no impact to taxpayers.

Looking further into the future, we expect more states to add additional requirements and fees for tax return preparers. While we do not believe additional state requirements will produce any added benefits, we believe states will also create programs similar to the IRS's program, therefore adding burden to the tax preparation industry. We hope the IRS will work with the States to ensure that such State programs do not cause additional burdens through more duplication of existing certification programs.

We remain committed to the goals and objectives of the Return Preparer Initiative. We look forward to continuing to work with the IRS to raise the standards of professionalism and integrity in our industry and we are confident that the American taxpayer and the tax administration system as a whole will benefit from our collective efforts.

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Chairman BOUSTANY. Thank you, Ms. Pickering.  
Ms. Thompson, you may proceed.

**STATEMENT OF PATRICIA THOMPSON, CHAIR, AICPA TAX EXECUTIVE COMMITTEE, AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, WASHINGTON, D.C.**

Ms. THOMPSON. Good morning, Chairman, Ranking Member Lewis, and Members of the Subcommittee. My name is Pat Thompson. I am a CPA and chair of the AICPA Tax Executive Committee. I am also the partner at Piccerelli, Gilstein & Company, LLP, located in Providence, Rhode Island. Thank you for the opportunity to appear here today.

It has been a year-and-a-half since the IRS released its report on the paid tax return preparer community. The AICPA has been a steadfast supporter of the IRS goal of enhancing compliance and elevating ethical conduct. Ensuring that tax return preparers are competent and ethical is critical to maintaining taxpayer confidence in our tax system. Indeed, these goals are consistent with the AICPA's own code of conduct and enforceable tax ethical standards.

We believe the IRS should be commended for their efforts in the implementation of the return preparer program. Specifically, the IRS has devoted an unprecedented amount of time to listening to stakeholders' concerns and suggestions regarding the program, and made numerous changes and adjustments.

Since the release of the report, and as the IRS has moved to implement its recommendation, the IRS—I'm sorry, the AICPA has expressed its concern regarding specific aspects of the program.

One concern we had was the initial proposal to subject non-signing staff of CPA firms who are supervised by CPAs to the entire regulatory regime applicable to registered tax return preparers, including testing and specific continuing education requirements. However, we believe the changes adopted by IRS in notice 2011-6 confirm the Service's recognition of the inherent regulatory regime within which CPAs and other circular 230 legacy practitioners already practice, as well as the fact that CPA firms must stand, as a matter of licensure, behind the work done by its members and employees of the firm.

We believe these changes are appropriately focusing the program on the unenrolled preparer community that was implicated in GAO and TIGTA compliance studies cited in the IRS report.

The AICPA supports the tax return preparer program as it is structured today. Specifically, we support registering tax return preparers and the issuance of unique taxpayer [sic] identification numbers. Registration will allow the accumulation of important data on specific preparers, as well as classes of preparers, as a way that will allow the IRS to tailor compliance and education programs in the most efficient manner, expanding the ethical umbrella of circular 230 over all paid income tax preparers.

Unenrolled preparers had previously not been subjected to the ethical guidance of circular 230, nor the circular sanctions on improper conduct. Creating a continuing education construct geared towards the unenrolled preparer community. We appreciate the Service's adoption in the recently-issued package of final regulations under circular 230 of modification to last year's proposed regulations regarding continuing education.

Including a basic 1040-oriented examination as an aspect of becoming a registered tax return preparer, moving away from a multi-tiered testing structure in order to focus on the basics is the correct remedial approach for the unenrolled preparer community that was, again, implicated in GAO and TIGTA compliance study. We also believe that having one examination would be less confusing to taxpayers in understanding the relative qualifications of the different classes of tax return preparers.

With regard to taxpayer confusion regarding relative qualifications, the IRS recognized this problem through the recent issuance of notice 2011-45, which constrains registered tax return preparers from misleading advertising and solicitation, and will require them to use the following statement in ads.

The IRS does not endorse any particular individual tax return preparer. For more information on the tax return preparers, go to IRS.gov. We are confident that the IRS website will contain the additional information that taxpayers will need to make appropriate choices concerning selection of a tax advisor.

We also believe that any public database developed by IRS that is designed to serve as a look-up function where taxpayers may search for their preparer should be structured to mitigate any taxpayer confusion regarding relative qualifications. We are pleased with the work the IRS has undertaken with regard to its tax preparer program, and want to emphasize our overall support.

We share the Service's interest in improving tax administration, and protecting the tax-paying public. We look forward to working on the IRS as they continue to implement the program.

Thank you again for the opportunity to testify, and I would be happy to answer any of your questions.

[The prepared statement of Mr. Thompson follows:]



**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS****TESTIMONY BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON OVERSIGHT****HEARING ON THE IMPLEMENTATION OF  
THE IRS PAID TAX RETURN PREPARER PROGRAM****JULY 28, 2011**

Good morning Chairman Boustany, Ranking Member Lewis and Members of the Subcommittee. My name is Patricia Thompson. I am a CPA and I am the Chair of the American Institute of Certified Public Accountants' (AICPA) Tax Executive Committee. I am also the tax partner at Piccerelli, Gilstein & Company, LLP, a CPA firm in Providence, Rhode Island, and have been with the firm for over 32 years. I would like to thank this Subcommittee for the opportunity to appear at today's hearing on the implementation of the IRS paid tax return preparer program.

It has been a year-and-a-half since the Internal Revenue Service (IRS) released its report on the paid tax return preparer community, *Internal Revenue Service Return Preparer Review*. The AICPA has been a steadfast supporter of the IRS' overall goals of enhancing compliance and elevating ethical conduct. Ensuring that tax preparers are competent and ethical is critical to maintaining taxpayer confidence in our tax system. Indeed, these goals are consistent with AICPA's own Code of Conduct and enforceable tax ethical standards, the Statements on Standards for Tax Services.

We believe the IRS should be commended for its efforts in the implementation of the return preparer program. Specifically, the IRS has devoted an unprecedented amount of time to listening to stakeholder concerns and suggestions regarding the tax return preparer regulatory program, and made numerous changes and adjustments.

Since the release of the report and as the IRS has moved to implement its recommendations, the AICPA has expressed its concern regarding specific aspects of the program. One concern we

had was the initial proposal to subject non-signing staff of CPA firms who are supervised by CPAs to the entire regulatory regime applicable to registered tax return preparers, including testing and specific continuing education (CE) requirements. The IRS subsequently published Notice 2011-6 which adopted a limited exemption from testing and CE requirements for those non-signing employees of CPA firms who are properly supervised by licensed CPAs and other licensed professionals who have historically practiced before the IRS under Circular 230. We believe these changes adopted by IRS confirm the Service's recognition of the inherent regulatory regime within which CPAs and other Circular 230 legacy practitioners already practice, as well as the fact that that CPA firms must stand, as a matter of licensure, behind the work done by the members and employees of the firm. We believe these changes appropriately focus the return preparer regulatory program on the "unenrolled" preparer community that was implicated in the Government Accountability Office (GAO) and Treasury Inspector General for Tax Administration (TIGTA) compliance studies cited in the IRS report. Those studies had looked at the types and quality of services provided by various paid tax return preparers.

The AICPA supports the tax return preparer program as it is structured today. Specifically, we support:

- Registering paid tax return preparers and the issuance of unique preparer tax identification numbers (PTINs). Registration will allow the accumulation of important data on specific preparers as well as classes of preparers in a way that will allow the IRS to tailor compliance and education programs in the most efficient manner.
- Expanding the ethical umbrella of Circular 230 over all paid income tax preparers. We have consistently made this recommendation in our official comments, and we are pleased to observe the IRS adoption of this expansion. Commercial preparers had previously not been subjected to the ethical guidance of Circular 230 nor the circular's sanctions for improper conduct. Over time, the expansion of Circular 230 will pay significant dividends in achieving the program's goal of elevating ethical conduct.

- Creating a continuing education construct geared towards the “unenrolled” preparer community. We appreciate the Service’s adoption in the recently issued package of final regulations under Circular 230 of modifications to last fall’s proposed regulations regarding the continuing education aspects of Circular 230.
  
- Including a basic Form 1040 oriented examination as an aspect to become a “registered tax return preparer.” Moving away from a multi-tiered testing structure in order to focus on the basics is the correct remedial approach for the “unenrolled” preparer community that was, again, implicated in the GAO and TIGTA compliance studies. We also believe that having one examination will be less confusing to taxpayers in understanding the relative qualifications of the different classes of tax return preparers.

While we support the requirement that all paid preparers must obtain a unique PTIN, this requirement has led to some confusion in practice. The PTIN is generally required by all preparers who prepare “all or substantially all” of a tax return. This is perfectly clear in the instance of a preparer who has overall supervisory responsibility for the preparation of the return such that he or she is required to sign the return under the relevant Code and regulations. In the case of non-signing preparers, including staff of CPA firms who support a CPA’s practice and interns who work at CPA firms during the busy season or during semester breaks, the requirement is less clear. Because the test for who needs a PTIN is a facts and circumstances test, some amount of confusion may be unavoidable. The result has been that many individuals have interpreted the requirement very broadly in deciding whether to obtain a PTIN. The IRS has issued FAQs to help individuals better understand the requirement.

With respect to the expansion of Circular 230 to “unenrolled” preparers, this has been a central aspect of AICPA’s recommendations throughout all of our public commentary on the IRS return preparer regulatory program. We believe that an enforceable ethics code is integral to the functioning of the program. CPAs operate under numerous ethics regimes, state accounting board, AICPA standards, Circular 230 to name a few, and we believe that a strong set of ethical standards enhances our profession.

Regarding efforts to impose continuing education, we support a CE requirement for registered tax return preparers. While certain aspects of the proposed CE requirement have not yet been finalized, we are encouraged that the IRS issued Notice 2011-61 requesting comments on the process to become a qualified continuing education provider. The AICPA plans to respond to this IRS request for comments.

Regarding the competency testing aspect of the program, we recently submitted our comments to IRS in response to IRS Notice 2011-48 requesting comments on the contents of the proposed examination regarding Form 1040. We were pleased to provide insights that our organization has developed in light of our experience with developing and administering the Uniform CPA examination.

With regard to taxpayer confusion regarding the relative qualifications of the different classes of tax return preparers, the IRS recognized this problem through the issuance of Notice 2011-45 on May 31, 2011 which constrains "registered tax return preparers" from misleading advertising and solicitation. Notice 2011-45 stated that Circular 230 will be amended to "require a registered tax return preparer using any paid advertising involving print, television or radio, in which the individual represents himself or herself to be a registered tax return preparer to display or broadcast the following statement: 'The IRS does not endorse any particular individual tax return preparer. For more information on tax return preparers go to IRS.gov.'" We are confident that the IRS website will contain the additional information that taxpayers will need to make appropriate choices concerning selection of a tax adviser.

Finally, we believe that any public database developed by IRS that is designed to serve as a "look up" function where taxpayers may search for their preparer should be structured to mitigate any taxpayer confusion regarding the relative qualifications of the different classes of tax return preparers by making available the tax return preparer's other designations (CPA, attorney and Enrolled Agent). The database should also reference the tag line described above as well as the additional information contained on the IRS website.

We are pleased with the work the IRS has undertaken with regard to its tax preparer program and want to emphasize our overall support for this program. We share the Service's interest in improving tax administration and protecting the taxpaying public. We look forward to working with the IRS as they continue to implement the program.

We hope the Subcommittee will find this testimony useful in your continued work regarding the implementation of the IRS paid tax return preparer program. We welcome the opportunity to discuss this information with you informally or in any future public hearing.

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The AICPA is the national professional organization of certified public accountants comprised of approximately 370,000 members. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

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Chairman BOUSTANY. Thank you, Ms. Thompson.  
Mr. Cinquemani, you may proceed.

**STATEMENT OF PAUL CINQUEMANI, DIRECTOR OF MEMBER SERVICES, BUSINESS DEVELOPMENT AND GOVERNMENT RELATIONS, NATIONAL ASSOCIATION OF TAX PROFESSIONALS, APPLETON, WISCONSIN**

Mr. CINQUEMANI. Thank you, Mr. Chairman, Chairman Boustany, Ranking Member Lewis, Members of the Subcommittee, we thank you for the opportunity to speak to you regarding our thoughts on what we consider to be the important issues stemming from a review of the return preparer review recommendations.

The IRS is following most recommendations on publication 4832. Long-term plans more detailed than that have not been made available to stakeholders. We know for certain, though, that before December 31 of 2013, affected tax preparers will have to be registered, suitable, tested, and educated, or they will not be permitted to continue as tax return preparers.

NATP is pleased that the process has led out with registration. We have long counseled that relevant, accurate data is needed before the IRS can determine the extent of its preparer population, and then hone in on identifying the perpetrators of problems. Until then, any systemic approach to mitigating the tax gap or ridding Administration of the unscrupulous and incompetent is speculative.

Registration, combined with mandatory eFiling will hereafter give the government the ability to know not only its population of preparers, but also to match them with the work they do. And we will finally be able to really know who does good work and who does not.

Implementation so far seems reasonable, in terms of its proficiency. Considering the size of the task, amazing progress has been made. However, there appears to be an imbalance in treating affected tax preparers fairly. We have noted evidence which leads to such impressions. Here are some example.

Number one, Section 10.3 of circular 230 literally prevents affected tax preparers from giving pre-transaction or other timely advice to their clients. The result of such a provision is counter-intuitive to good tax administration. It is also an egregious restraint of trade. It either puts taxpayers in harm's way because they will not become compliant, or it forces affected tax preparers out of business because they cannot compete with those who are permitted to give such advice.

Third example—or, excuse me, second, the late decision to carve out preparers who are adequately supervised by attorneys, CPAs, and EAs, and the competitive advantage it gives the firms that are so exempted.

Third, the change to requiring registration every year, instead of every three years, and the cost it poses to practitioners and to the IRS.

And, fourth, the need to delay continuing education requirements until calendar year 2012.

While communication of such developments indicates that progress is being made, the items just mentioned cause concern on the part of those whose livelihoods are on the line. The impact of the affected preparer community should be predictable under the circumstances. As we educate our members on these developments,

those that must take the competency examination in order to stay in business naturally have some concerns.

Many affected NATP members have registered the following with us. Overall, they are very distressed at the ostensible threat to their businesses. They want to study for and take the examination immediately. Since their average age is 56, it has been a little while since they have had to take an examination. And this one they see as an examination that determines whether or not they get to continue their livelihood or not. So they do, indeed, have test anxiety.

They believe that they are being singled out as though they are responsible for all the unscrupulous behavior and incompetence in the preparation of tax returns. They believe that they are discriminated against on the basis of credentials. Some are going to retire. They are just going to work up to December 31, 2013, and then end it. Others are selling their practices. Still others are selling to credentialed professionals, and staying on to make their livelihood.

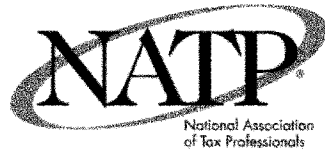
And for some, the restraint of trade provisions in revised circular 230 were the last straw. They talk of taking to the courts. NATP is concerned that the tax administration system will be harmed by a loss of capable preparers that provide for the current compliance enjoyed by the system. We believe that many of these problems can be alleviated with reasonable and economic tweaks in the process, going forward.

We recommend the following. First, remove the specific restraint of trade provision in Section 10.3(f)3 of circular 230. On its face, regulators should be very interested that taxpayers are informed. At equity, preparers should not be put in a position of having to refer their clients to competitors for advice in the course of planning, emergencies, or any other instance in which taxpayers need help with compliance. At a minimum, change the wording to reflect that registered tax return preparers may give needed advice to their clients, but that such advice will not be considered confidential or privileged, as such communication has meaning under code Section 7525.

The IRS should exercise more caution implementing this program, especially in light of their current resource limitations, until better information can be obtained through matching PTINs with problem returns.

And a final recommendation. Building a program model that can keep small business preparers in place, thereby assuring jobs and livelihoods that can provide for healthy competition, and therefore, better serve the taxpayer and the tax administration system. Thank you.

[The prepared statement of Mr. Cinquemani follows:]



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**Return Preparer Review Initiative -  
a Retrospective**

July 28, 2011

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Discussion Paper Submitted to the  
House of Representatives  
Committee on Ways and Means  
Subcommittee on Oversight

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By Paul Cinquemani, Director of Member  
Services,  
Business Development and  
Government Relations

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Discussion Paper Submitted to the House of Representatives Committee on Ways and Means Subcommittee on Oversight

**Return Preparer Review Initiative – A Retrospective**

July 28, 2011

**Overview/background**

The National Association of Tax Professionals (NATP) is honored to submit this paper to the Committee on Ways and Means Subcommittee on Oversight and comment on this historic and significant undertaking which we believe is critical to tax administration. NATP appreciates the opportunity to register its observations and concerns regarding the status of the Return Preparer Review Initiative as they are seen through the eyes of RTRP candidates.

NATP lends tremendous influence to 11 million taxpayers' decisions about compliance through its educated membership of over 20,500 tax professionals. NATP's membership is an eclectic group comprised of attorneys, CPAs, EAs, CFPs, BBAs, MBAs, PhDs, as well as Associate degrees, accountants, part-time professionals, and those who have entered the profession as a second career. NATP is an "industry-specific" association as opposed to a "credential-specific" association. We therefore have no bias for any one group of tax professionals over another. Approximately half of our members are "credentialed," which is a term used by the IRS to primarily designate attorneys, CPAs and EAs. Accordingly, roughly half of our members are directly affected by the Return Preparer Review Initiative. Approximately 82% of these non-credentialed professionals have post-high school degrees.

NATP is a nonprofit professional association that is committed to the integrity of the tax administration system and the application of tax laws and regulations by providing education, research and information to tax professionals. For over 30 years, we have existed to serve professionals who work in all areas of tax practice. We provide our members with over 300 tax education offerings in more than 100 locations throughout the United States, as well as webinars, online interactive, and self-study programs, a service unmatched by any other national tax association. In total, this equates to approximately 131,000 CPE credits awarded annually. In addition, our 36 Chapters and National headquarters serve the public through regular news releases, client brochures and newsletters, and a designated taxpayer website. Our Chapters provide significant member involvement in local and state communities. Our headquarters with 50 employees is located in Appleton, Wisconsin.

We believe we are uniquely qualified to speak to the status of the Return Preparer Review Initiative because of the wide cross-section of tax professionals in the industry that comprises our membership.

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### **Purpose**

It has been almost 19 months since the Report of the Return Preparer Review and its recommendations were issued to the Secretary of the Treasury and the President of the United States. The public and the tax professional community received their first glimpse of it on January 4, 2010. Some of the outcomes and recommendations of that report have changed over that period. Despite the angst and critiquing of this considerable and ambitious project, significant progress has been made.

NATP is supportive of the goals of this program as is its membership. Nothing but good can come from raising the bar and enhancing professional knowledge and competence in complying with our complex tax code. The road to achieving those goals, however, can be fraught with unintended consequences.

It is the purpose of this paper to:

1. Address the progress made by the IRS in preparing and implementing a program work plan for this initiative;
2. Comment on how that progress is impacting the tax return preparer community as well as the taxpaying public; and
3. Recommend some "fine-tuning" of the process to ensure balance; preservation of small business and marketplace competition; and taxpayer service.

### **Summary of Salient Points**

The IRS is following the recommendations of Publication 4832. Long-term plans more detailed than that have not been made available to stakeholders. We know for certain that somehow, before December 31, 2013, affected tax preparers will have to be registered, suitable, tested and educated or they will not be permitted to continue as tax return preparers. NATP is pleased that the process has led out with registration. We have long counseled that relevant accurate data is needed before the IRS can determine the extent of its preparer population and then hone in on identifying the perpetrators of problems. Until then, any systemic approach to mitigating the tax gap or ridding tax administration of the unscrupulous and incompetent is speculative.

Implementation so far seems reasonable in terms of its proficiency. Considering the size of the task, amazing progress has been made. However, there appears to be an imbalance in treating affected tax preparers fairly. The following evidence leads to such impressions:

- The egregious change to Section 10.3 of Circular 230 resulting in restraint of trade for affected tax preparers. Section 10.3(f)(3) prevents them from giving pre-transaction advice to their clients. It results in either putting taxpayers in harm's way for non-compliance or it forces affected preparers out of business because they cannot compete.
- The late decision to carve out preparers "adequately supervised by attorneys, CPAs and EAs," and the competitive advantage it gives to these firms.
- The change to requiring registration every year instead of every three years and the cost it poses to practitioners and the IRS.
- The cost to affected tax preparers that gives those unaffected another competitive advantage.
- The need to delay continuing education requirements until 2012.

While communication of such developments indicates that progress is being made, the items above cause concern on the part of those whose livelihoods are on the line.

The impact on the affected preparer community should be predictable under the circumstances. As we educate our members on these developments, those that must take the competency examination in order to stay in business naturally have concerns. Some NATP members perceive the following as major concerns:

- Overall, they are concerned about the threat to their practice.
- They want to study for and take the examination immediately.
- They believe they are being singled out as though they're responsible for all the unscrupulous behavior and incompetence in the preparation of tax returns.
- They believe that all of the effort and resources expended in this process will have little effect on ridding the system of the incompetent and/or unscrupulous.
- They believe that they're being unfairly punished and that they're put into the same category as mobile scam artists that proliferate from January 15 through April 1.
- They believe they're being discriminated against on the basis of credentials.
- They believe they're effectively being governed by professionals that would like to put them out of business.
- They are going through "test anxiety." Since the average age of our members is 56 years old, it's been quite awhile since they've had to take an exam.
- Some of them have indicated that they will work right up to December 31, 2013 and then retire. Others will sell their businesses.
- Some are studying to pass the EA examination so that they're part of the "governing group."
- For some, the lack of due process and the restraint of trade provisions in revised Circular 230 were the last straw. They talk of taking to the courts.

NATP is concerned that the tax administration system will be harmed by a loss of capable preparers that provide for the current compliance enjoyed by the system. We believe that many of the problems above can be alleviated with reasonable, economic tweaks in the process going forward. We recommend the following:

1. Remove the specific restraint of trade provision in Section 10.3(f)(3) of Circular 230. On its face, regulators should be interested that taxpayers are informed. At equity, preparers should not be put in a position of having to refer their clients to competitors for advice in the course of planning, emergencies or any other instance in which taxpayers need help with compliance. At a minimum, change the wording to reflect that registered tax return preparers may give advice in their practice before the IRS, but that such advice will not be considered confidential or privileged as such communication has meaning under Code Section 7525.
2. The IRS should exercise more caution in implementing this program until better information can be obtained through matching PTINs with problem returns.
3. Build a program model that can keep small business preparers in place thereby assuring jobs and livelihoods that can provide for healthy competition and therefore better serve the taxpayer and the tax administration system.

#### **Progress in Preparing and Implementing the Initiative**

We were encouraged that Commissioner Shulman took the bold step of embracing the responsibility for the regulation of tax return preparers on the part of the IRS. We have long thought that the IRS had the authority and wherewithal to accomplish this with reasonable economy, though it

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has resisted the undertaking in the past. Truly, the Service is in a position to understand the needs, vagaries, pitfalls and practical considerations to regulating all tax return preparers. So it was with regard and relief that we applauded and embraced the open and transparent manner in which the Final Report to the Treasury and the President of the United States regarding Return Preparer Review was undertaken. The development of the Report was reasonably thorough, as those kinds of undertakings go. The IRS has plenty of history and experience to draw from as well as sources for information. The Report recommendations were cautious and measured as well they should be.

The Report pointed out that over 80 percent of all federal tax returns filed in 2007 and 2008 used either a tax return preparer or tax return software. NATP, in its testimony toward that Report, urged that caution should be taken in the undertaking of this program so as not to precipitate a fall-out of professionals. The tax administration system enjoys its current rate of compliance - high as it is among free world nations - due in large part to the efforts, ethics and integrity of this group of practitioners. We recommended a prudent transition from being unregistered to becoming registered or licensed. We believed that there should be a reasonable phase-in period to allow current non-Circular 230 preparers to become registered before they are prohibited from preparing returns. To move too quickly has the potential to negatively affect the livelihood of tens of thousands of small business owners and their employees who provide credible and reasonably priced service to millions of taxpayers who depend on them. It also has the potential to seriously and negatively impact the ability of the tax administration system if significant numbers of competent and legitimate tax return preparers currently servicing that system close their doors. The report indicated that such prudence was considered in adopting a three-year transition and we thought the process would be better for all concerned because of it. We anticipated reasonable, planned and well-measured progress toward the stated goals of the recommendation section, though no timeline for the process was given in the Report.

We were particularly pleased that implementation led with the intent to find and track all tax return preparers through registration and the assignment of a Preparer Tax Identification Number (PTIN). We have repeatedly stated that Registration will enable the government to determine the number of people that prepare tax returns and the quality of the work that they do. Any attempt to address fraud and error in the tax administration system should logically and sensibly first determine the extent of the population through which it is occurring. The population of unscrupulous and unethical tax return preparers was not previously defined nor was it determinable. No one knew just how many tax return preparers there were. Despite all the rhetoric and anecdotes about shoddy, unethical or fraudulent tax preparation, there was no way to determine which preparers were law-abiding, ethical and competent. Registration is a simple measure which, combined with mandatory e-filing, gives the government the ability to match tax returns with those that prepared them. At last the government will know not only how many people are preparing tax returns, but also who they are and how good their work is. Examine the difference, for example, in some very basic statistics about the population before registration as compared to after registration in 2010:

Type of Practitioner	Population per TIGTA	Population per Previous Voluntary	Population per Mandated PTIN Registration Process
	Sampling of CAF March, 2005	PTIN System	March 7, 2011
Attorney	137,928	10,592	25,185

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CPA	181,237	132,042	197,232
Enrolled Agent	25,610	33,608	40,109
Multiple Designations	62,397	0	0
No Designation/Credential	0	244,051	429,475
Total	<u>407,172</u>	<u>420,293</u>	<u>692,001</u>

This measure, coupled with mandated electronic filing, will go a long way toward addressing the identification and remediation of unscrupulous, unethical and incompetent tax return preparers as well as the need for testing and education. For the American public as a whole, this measure makes all paid preparers accountable unless they go "underground." Registration will not stop fraud, but it may indicate who and what is responsible for it.

As noted directly above, the main contribution of the program so far has been to identify the population of preparers. That significant piece has been reasonably successful in its result. The other piece, mandating the electronic filing of all returns, is also well on its way to completion. Oddly enough, mandated e-filing was not a recommendation in the Report. It is a linchpin in the process, however. We now eagerly await the results of matching tax professionals to the returns that they prepare. Finally we'll have the ability to determine which preparers are actually responsible for the most damage to the tax administration system in terms of dollars as well as unscrupulous and/or incompetent practice. Any plan to "rid the system of malcontents," mitigate costly compliance errors and raise the bar regarding competence has to determine first the extent of the problem faced and then has to have a means for identifying the actual perpetrators of the problem. We'll know who needs to be tested, trained and/or otherwise vetted. This has been good progress.

The IRS appears to be following the general direction of the recommendations set forth in Publication 4832 (The Report of the Return Preparer Review). Specific plans for the long-term with steps to be taken, forward-looking implementation issues and timeline considerations have not been readily available to stakeholders. What's been known for certain is that affected tax preparers will have to register, be deemed suitable through background checks and finger-printing, pass an examination, and take continuing education requirements all before December 31, 2013. Other notifications and decisions concerning the status of plans and points of implementation have had to be gleaned from speeches of IRS executives before bar associations, accounting and financial groups and other venues, or from the IRS website Tax Professionals section through a listing of frequently asked questions. To be fair, some direction has come in meetings of appropriate IRS executives with stakeholder groups in monthly meetings at the IRS at 1111 Constitution Ave. in Washington, DC. Much of the undertaking of this project has been inexplicably delayed, and deviations from the recommendations in the initial Report have been unsettling.

NATP is urging transparency throughout this process to ensure the fair treatment of affected tax preparers. We offer the following as evidence leading to some concerns:

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- The issuance of final regulations with unfair changes to Circular 230 ignored previous commentary on their proposal that a "surprise" provision under Section 10.3(f)(3) unfairly restrains affected tax preparers' trade by preventing them from giving pre-transaction advice to their clients. We were surprised this proposal was contained in the final regulations. The preamble to the regulations state that this provision was inserted to denote that the federally authorized tax practitioner privilege under Code Section 7525 does not apply to communications between a taxpayer and a registered tax return preparer because advice provided by a registered tax return preparer is intended to be reflected on a tax return and is not intended to be confidential or privileged. The need to make that clarification has its place, but the language used in this section threatens the very existence of these small businesses.

This provision essentially states that a registered tax return preparer doesn't have the authority to provide tax advice to a client or other person except as necessary to prepare a tax return. That appears to mean they can't give "pre-transaction" counsel or do tax planning with clients or prospective clients or respond to a client's request for help in being compliant. That obviously has a detrimental impact on the practice of many tax preparers. It is common practice for tax return preparers to meet with clients at times other than during tax season. Additionally, taxpayers may seek advice from a return preparer as a "second opinion" or when they are looking to engage a preparer. Clearly this provision is not only unprecedented and without warrant, it is administratively counterproductive. This provision impedes the tax preparer's ability to effectively counsel taxpayers on the proper applicability of tax law as it pertains to their specific tax responsibilities.

Such an unrealistic and unfair restriction either puts taxpayers in harm's way because they will become non-compliant, or it will force affected preparers out of business because they cannot compete with those who "are permitted" to give such advice.

- The late decision, led by protesting organizations that had input to the public comment process for the major part of 2009, to carve out a sizeable number of preparers who are presumed to be "adequately supervised by attorneys, CPAs and EAs." This decision removed thousands of employees that prepare tax returns from the testing process as well as continuing education, resulting in cost savings to these firms. It also put these firms in an advantaged position competitively against those firms not qualifying for such an exemption. Such a decision also dilutes the information available to the IRS as to who may comprise the population of tax return preparers.
- The change to requiring registration every year instead of every three years and the cost it poses to practitioners. The Report stated specifically on page 33 of Publication 4832: "Registration will be phased in to reduce burden on both the IRS and tax return preparers. Tax return preparers also will be required to renew their registration every three years." The cost of this item may seem insignificant at \$64.25 per individual, but it constitutes a tripling of costs expected by firms who will pass these costs along to the taxpayer. An uncalculated cost is the time, effort and "red tape," to include background reviews that go into the administration of registration every year now instead of every three years.
- The cost to affected tax preparers that gives those unaffected another competitive advantage. Affected tax preparers will have to pay up to \$90 to be finger-printed and to have their background checked to determine their suitability. It is not clear, at this point, whether background checks will be required annually or not. Enrolled Agents, who previously had to pay \$125 every three years, had their fee reduced to \$30 which includes the background

check. This provides an advantage to Enrolled Agents not available to any other tax professional. Further, attorneys, CPAs and EAs do not have to be finger-printed. The cost of finger-printing seems unnecessary and redundant. If practitioners have become Electronic Return Originators (EROs), which includes a principal and responsible official, they had to submit fingerprints to the IRS. They did this by receiving fingerprint cards in the mail and taking them to their local police department. Why should they now have to pay up to \$90 to have this done again? Why couldn't those who are not EROs be sent or request fingerprint cards from the IRS and follow the same procedure? It would seem that finger-printing would not be required annually, but that has not been addressed or clarified either.

In addition to these fees, affected tax preparers must pay to take the competency examination. Currently there is no indication of what that fee will be. The only indicator is the cost to take the Special Enrollment Examination (SEE) which is provided by the same vendor selected to provide the competency examination. The cost to take that portion of the SEE that tests individual tax return expertise is \$97. Affected tax preparers will also have to take 15 hours of continuing education. The cost of taking qualifying courses range anywhere from \$5 to \$25 per credit hour. There is currently no fee for finally obtaining the Registered Tax Return Preparer designation. Affected tax preparers will have to pass these costs along to the taxpayer. These costs will not have to be incurred by exempt firms for their registered employees that are deemed adequately supervised by attorneys, CPAs and EAs.

Failing to be mindful of the many small businesses who employ part-time, seasonal, or few employees, could put many qualified tax professionals out of business. Many of these employers conduct their businesses in small or rural communities where access to professional tax assistance is minimal. They clearly provide a valuable service that is needed. Putting them out of business because of the high cost of doing business does nothing to further the effectiveness of the tax administration system.

- The delay in the start of the competency examination. Some are predicting that the test will not be available until after tax season in 2012. Such delays have effectively taken at least a year away from the "three years from the initial implementation date of testing to pass the required examination(s)" as stated on page 35 of Pub 4832. The reason given in the publication for this transition was that "the testing must be administered in a way that avoids significant interruption of service to taxpayers." Where is that concern today?

While communication of such developments indicates that progress is being made, the manner in which it transpires doesn't elicit much confidence from those whose livelihoods are on the line.

NATP is concerned that the tax administration system will be harmed by a loss of capable preparers that provide a high value proposition in enabling the current compliance enjoyed by the system. We have commented on that consistently as this topic has been considered by legislators over the past decade. Just as important, as we wrap up our thoughts and comments, we feel constrained to offer a genuine concern for the ability of the IRS to fulfill its role adequately as the nation's tax collector. Congress has a tendency to enact legislation that puts requirements on the Treasury and, consequently, the IRS that exceed their traditional role. Further, the IRS was not given additional employee resources to accommodate this significant growth in its responsibilities.

We lend our voice to many governmental leaders who have expressed a fear that the IRS is being worn and battered by such impossible demands to oversee and implement the ideas of legislators in governance of matters far afield from its mission. The demands made upon the Service keep it from being an efficient administrator of our tax system. When oversight does not go as

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anticipated, when problems occur because the Service is pulled beyond reasonable expectation to spread itself too thin, it becomes the "whipping boy" of the very Congress that puts it in that position...to say nothing of the public outcry and the criticism leveled by GAO, TIGTA and its many watchdogs. The Taxpayer Advocate took a recent swipe at the IRS because it cannot provide the expected telephone service the public demands. History provides evidence that the IRS will not get the resources it needs to administer such an extension of its responsibility. We've noted in the past that the complexity of the tax code all by itself is enough to break the back of our tax administration system. As prominent committee members charged with overseeing the Treasury and advising the government concerning the affairs and needs of the IRS, we entreat you to address this issue with the Congress.

We believe that many of the problems in the Return Preparer Review Initiative can be alleviated with reasonable and economic tweaks in the process going forward. With that belief, we recommend the following:

1. Remove the specific restraint of trade provision in Section 10.3(f)(3) of Circular 230. On its face, regulators should be interested that taxpayers get the advice they need from their trusted tax advisor so that they are informed and compliant in their business transactions. To preclude registered tax return preparers from advising their clients at any point is counterproductive to tax administration and the very principles that underlie the Report and its' recommendations. At equity, preparers should not be put in a position of having to refer their clients to competitors for advice in the course of planning, emergencies or any other instance in which taxpayers need help with compliance. Let the matching process of putting PTINs together with erroneous returns be the determiner of who is qualified to work at what level in this industry.
2. The IRS should reconvene to consider planning and realistic timelines in view of their current resource limitations. They should exercise caution and restraint in implementing this program until better information can be obtained through the matching process referred to in the recommendation above.
3. Build a program model that can keep small business preparers in place thereby assuring jobs and livelihoods that can provide for healthy competition and therefore better serve the consumer/taxpayer and the tax administration system. The idea here is initially to educate, not sanction; to raise the bar, not eliminate tax return professionals.
4. Our concern in the final Circular 230 Regulations is that there is a clearer division of authority between OPR and RPO, for example, in Section 10.20 of Circular 230.

Thank you for your graciousness in presenting us with this opportunity to express our thoughts regarding what we consider to be important issues in the newly instituted regulation of paid tax return preparers. We are available to share our unbiased knowledge on issues of tax administration from the perspective of both Circular 230 and non-Circular 230 tax professionals. We have been educating on behalf of all small business tax preparers since 1979.

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Chairman BOUSTANY. Thank you, Mr. Cinquemani.  
Mr. Gary, you are recognized for five minutes.



**STATEMENT OF LONNIE GARY, EA, USTCP CHAIR, NATIONAL ASSOCIATION OF ENROLLED AGENTS GOVERNMENT RELATIONS COMMITTEE, WASHINGTON, D.C.**

Mr. GARY. On behalf of the National Association of Enrolled Agents, NAEA, and 43,000 enrolled agents, I want to thank the chairman, the ranking member, and the subcommittee, for the invitation to testify on the IRS's efforts to provide new standards for and oversight of unlicensed paid return preparers.

EAs have, for some time, supported the efforts to bring order to the chaos all too easily found in the return preparer community. More recently, we applauded a number of early decisions by IRS, including elements unpopular with many in the industry, such as a requirement for both mandatory competency testing, and for continued professional education for all non-legacy circular 230 practitioners.

Clearly, IRS has kept its eye on the prize: protecting taxpayers by adopting a variety of taxpayer safeguards, establishing an IRS process for disciplining preparers, and placing the Office of Professional Responsibility in charge of ethical behavior, using the existing penalty structure for failure to sign a return and/or failure to provide a valid PTIN, and relying on registration fees to cover program administration and enforcement.

EAs believe self-funding is essential for ensuring adequate resources for full program implementation. Our main area of concern, however, is that the registered tax return preparers will be tested only on the most basic elements of individual income tax returns, but be permitted to prepare all income tax returns. Those who have taken a basic test would be able to market themselves as qualified to meet all tax preparation needs. Such an outcome protects only a portion of the tax-paying public. And, frankly, we don't understand why IRS insists on protecting some taxpayers, but not those with the most complex returns.

We 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. IRS could achieve this by creating a tiered credentialing with a limited credential, the registered tax return preparer, and unlimited credentials: EAs, CPAs, and attorneys.

Under a tiered system, legacy circular 230 practitioners would be authorized to prepare all tax returns, as under the current system, and would be granted unlimited practice before IRS. The newly credentialed would demonstrate competency on basic individual tax issues by passing an augmented part one of the special enrollment exam, and then be granted authority to prepare the basic return, along with limited representation authority.

IRS could enforce this regime simply through computer matching of PTINs to the type of return. We believe that, without a tiered approach to credentialing, small business taxpayers, in particular, will suffer unnecessarily. We suggest it is reasonable to hold paid preparers responsible for the special compliance issues associated with small business taxpayers.

I close by touching on two issues of great importance: promotion and enforcement. IRS must continue to reach out to all segments of the paid preparer community to explain what is expected, going

forward, into the next filing season. Nothing demonstrates this better than the fact that IRS recently identified roughly 100,000 return preparers who failed to comply with the new PTIN regulations for the 2011 filing season.

Even more importantly, 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 possibly misleading, fashion.

We also remain concerned that many non-compliant 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 understand that they should only use qualified preparers.

The public must also understand the difference between the new registered tax return preparers and the legacy circular 230 practitioners. This won't be easy, but it is necessary for the integrity of this process, and it needs to start now.

Promotion alone is not enough. The significant effort IRS is expending on preparer oversight will be for naught, absent a credible enforcement apparatus. Both taxpayers and qualified practitioners need a single point of contact at IRS to refer instances of suspected non-compliance. The Service must be prepared to pursue and punish to the full extent of the law parties who continue to prepare returns outside the new regulatory framework.

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

[The prepared statement of Mr. Gary follows:]

**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 practitioners<sup>1</sup>.

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;

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<sup>1</sup> 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.

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Chairman BOUSTANY. Thank you, Mr. Gary.  
Mr. Rothstein, you may proceed.

**STATEMENT OF DAVID ROTHSTEIN, RESEARCHER, POLICY MATTERS OHIO, RESEARCH FELLOW, THE NEW AMERICA FOUNDATION, CLEVELAND, OHIO**

Mr. ROTHSTEIN. Thank you, Mr. Chairman. Chairman Boustany, Ranking Member Lewis, and Members of the Subcommittee, thank you for giving me the opportunity to testify on behalf of Policy Matters Ohio, the New America Foundation, and the National Community Tax Coalition.

My research is primarily focused on the financial status and socio-economic challenges experienced by the millions of low and moderate income tax filers in the United States. And my comments reflect the perspective of those who provide free tax assistance to help these individuals through the VITA program.

My testimony today is based on the following four premises: one, low and moderate-income tax filers need and deserve high-quality, affordable options with regard to tax preparation assistance. The costs and approaches of paid tax preparation services should be transparent, and easy for consumers of such services to understand.

Several exemptions related to the new paid preparer regulations were established in response to issues raised by the paid preparer industry itself. And there are—and, number four, there are several implementation challenges that can be easily modified or resolved, so that the process can best serve working families, moving forward.

Let me start again by commending the IRS for undertaking this large effort of regulating, educating, and tracking paid tax preparers. This process is critical for both the tax preparation sector and millions of clients who use their services. The overall goal was to increase tax compliance and ensure that taxpayers were knowledgeable, ethical, and skilled.

The registration process, in our view, is crucial to track problem tax preparers, prevent the loss of income and revenue from inflated

and poorly prepared returns, maximize the intent and delivery of refundable tax credits, and allow consumers to comparison shop with full information in the marketplace.

That being said, we continue to have concerns about the registration process, and the interpretation of guidelines related to this initiative. We have some suggestions today that we believe can help.

One concern relates to the delayed registration of some 100,000 paid tax preparers with the IRS. Additionally, the data from this past tax filing season confirms that an extremely high number of fly-by-night paid tax preparation sites set up for a few weeks, charge high fees, and complete subpar and error-riddled returns. At worst, the preparers are totally disingenuous, targeting elderly and low-income filers, and selling them unnecessary services related to transferring funds, recovery rebates, and exaggerated refunds and Social Security claims, even after tax season.

A recent wave of claims has suggested that several companies have misled consumers by imitating the IRS or associates of some fashion. The damage, in terms of taxpayers' faith in the tax preparation sector has been significant. And these continued abuses fly in the face of this new registration program. The consumer community is concerned about enforcement, not just after these occur, but in preventing them before they occur.

A second issue of concern for taxpayers relates to who is covered by the regulations. To be clear, we strongly believe that anyone who the client thinks is a tax preparer should be registered and required to complete continuing education. The guidance from the IRS on this is helpful, but we are concerned about how it will be enforced and monitored.

VITA site clients commonly report to us that when they have engaged the services of certain paid preparers—generally the fly-by-night ones—the bulk of their return is typically completed by one person, where tax law informed knowledge is necessary, and when the return is signed by a paid preparer at the end, they barely look at the return at all. Or, worse, the return is not signed at all.

We implore the litmus test of who the client thinks is doing their taxes be used as a benchmark in some fashion. Additionally, we think it is vital that the test for certification be no less stringent than the existing individual 1040 section of the enrolled agents exam.

A third issue surrounds promotion and outreach for this new program. The majority of low and moderate-income families are unaware of this new registration requirement. They do not understand what these credentials mean, and how this program matters to them. Consumers need to know which preparer can do what services for them, and what credentials are required by preparers to perform such services.

Finally, a fourth issue of concern is transparency around process and cost. Over the last decade, for several reasons, the price of paid tax preparation has steadily increased. Most of the time, total price is not provided to them until the return is completely prepared. Under this new program we suggested disclosure and transparency process which provides a baseline of fees and costs associated with preparing the return. The fees do not have to be universal. But

rather, an estimate for comparison purposes to understand the fee structure upon completion.

Additionally, there needs to be a centralized toll free phone number and database for complaints, which Mr. Williams addressed earlier. Similar to researching a housing contractor or auto repair facility using the Better Business Bureau, taxpayers should be able to research their tax preparer for type of registration, education, credentials, and performance.

In sum, we believe this regulation process for paid preparers is needed and appropriate. We appreciate the opportunity to testify before you on the consumer perspective related to paid tax preparation.

I am happy to answer any questions. Thank you, sir.  
[The prepared statement of Mr. Rothstein follows:]

**Testimony of David Rothstein,  
Researcher - Policy Matters Ohio  
Research Fellow – New America Foundation  
Steering Committee Member – National Community Tax Coalition**

**House Committee on Ways and Means, Subcommittee on Oversight**

**Hearing on New IRS Paid Tax Return Preparer Program  
July 28, 2011**



Chairman Boustany, Ranking Member Lewis, and Members of the Subcommittee, thank you for giving me the opportunity to testify on behalf of Policy Matters Ohio, the New America Foundation, and the National Community Tax Coalition. My research is primarily focused on the financial status and socioeconomic challenges experienced by the millions of low-and moderate-income tax filers in the United States, and my comments reflect the perspective of those who provide free tax assistance to these individuals through the Volunteer Income Tax Assistance (VITA) Program. My testimony today is based upon the following four premises:

- 1) low- and moderate-income tax filers need and deserve high-quality, affordable options with regards to tax preparation assistance;
- 2) the costs and approach of paid tax preparation services should be transparent and easy for consumers of such services to understand;
- 3) several exemptions related to the new paid preparer regulations were established in response to issues raised by the paid preparer industry; and
- 4) there are several implementation challenges that can be easily modified or resolved so that the process can best serve working families moving forward.

Let me start by commending the IRS for undertaking this large effort of regulating, educating, and tracking paid tax preparers. This process is critical for both the tax preparation sector and the millions of clients who use their services. The overall goal was to increase tax compliance and ensure that tax preparers were knowledgeable, ethical, and skilled. The registration process, in our view, is crucial to track “problem” tax preparers, prevent the loss of income and revenue from inflated and poorly prepared returns, maximize the intent and delivery of refundable credits, and allow consumers to comparison shop with full information in the market.

That being said, we continue to have concerns about the registration process and interpretation of guidelines related to this initiative. Mainly, our concerns are related to the enforcement of the new regulations and how non-compliance will be addressed. Additionally, we have several recommendations on how to ensure that consumers are made aware of and understand these new changes.

One concern relates to the delayed registration of paid tax preparers with the IRS. The IRS has estimated that about 100,000 paid preparers have not registered. Additionally, the data from this past tax filing season confirms that an extremely high number of fly-by-night paid tax preparation sites set up for a few weeks, charge high fees, and complete subpar and error-riddled returns. At worst, the preparers are totally disingenuous, targeting elderly and low-income filers, and selling them unnecessary services related to transferring funds, recovery rebates, and exaggerated refunds and Social Security claims. A recent wave of claims have suggested that several companies have misled consumers by intimating that they are the IRS or “associates” of some fashion.<sup>1</sup> Attorneys General are filing lawsuits on behalf of consumers in a number of states, and the IRS has issued warnings cautioning tax payers about these abusive practices. But the damage in terms of taxpayers’ faith in the tax preparation sector has been significant, and these continued abuses fly in the face of this new registration program.

The consumer community is concerned about enforcement, not just after these fraudulent returns are prepared but also in preventing them before they occur. These scams and any method of undercutting the registration process have significant implications for taxpayers. Taxpayers are understandably less likely to file taxes, seek help, or work with the IRS once they have been victims of a scam. In short, it is imperative that a deliberative plan is put in place to move non-compliant paid preparers into the regulation process.

A second issue of concern for taxpayers relates to who is covered by the regulations. To be clear, we strongly believe that anyone who the client thinks is a tax preparer should be registered and required to complete continuing education. The guidance from the IRS on this is helpful, but we are concerned about how it will be enforced and monitored. VITA site and Legal Aid clients commonly report that when they have engaged the services of paid preparers, the bulk of their return is typically completed by one person (where tax law and form knowledge is necessary) and then the return is signed by a paid preparer at the end who barely looks at the return. Or worse, often the return is not signed at all. The current IRS guidance stipulates that the registration process includes non-signors who are

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<sup>1</sup> <http://milwaukeecourieronline.com/index.php/2011/07/23/irs-scams-hits-milwaukee-initiates-national-warning-from-agency/> & [http://www.cleveland.com/consumeraffairs/index.ssf/2011/07/irs\\_state\\_investigate\\_tax\\_prep.html](http://www.cleveland.com/consumeraffairs/index.ssf/2011/07/irs_state_investigate_tax_prep.html)

preparing tax returns, and although this is helpful, we implore this litmus test of “who the client thinks is doing their taxes,” be used as a benchmark. Straying far from this benchmark will render the testing and continuing education for registered tax preparers ineffective. Additionally, we think it is vital that the test for certification be no less stringent than the existing individual 1040 section of the Special Enrollment Exam (Enrolled Agent Exam). The stronger the test, the better the quality of returns.

A third issue surrounds promotion and outreach for this new program. The majority of low- and moderate-income families are unaware of the new registration requirement. They do not understand what these credentials mean and how this program matters to them. Thus, a concern is that the price of paid tax preparation will increase based on this process but with no real explanation for consumers. Consumers need to know which preparer can do what services for them and what credentials are required by preparers to perform such services.

Finally, a fourth issue of concern is transparency around process and cost. Over the last decade, the price of paid tax preparation has steadily increased. Taxpayers should have the ability to research and compare prices for services. Most of the time, this is not provided to them until the return is completely prepared. Under this new program, we suggest a disclosure and transparency process, which provides a baseline of fees and costs associated with preparing the return. The fees do not have to be universal but rather an estimate for comparison purposes and to understand the fee structure upon completion. Additionally, there needs to be a centralized toll-free phone number and database for complaints. This is critical not just for enforcement but for consumers looking to research preparers and credentials. Similar to researching a housing contractor or auto repair facility using the Better Business Bureau, taxpayers should be able to research their tax preparer for type of registration, education, accreditations, and performance.

In sum, we believe that this regulation process for paid preparers is needed and appropriate. We appreciate the opportunity to testify before you on the consumer prospective related to paid tax preparation. I am happy to answer any questions at this time.

Respectfully submitted,

David Rothstein

Chairman BOUSTANY. Thank you. I have a question for all the panelists. A very basic question. And that is, clearly when you're starting a new program like this, communication is important. And you have all touched on it.

So, I would like each of you to comment on what did the IRS do well, and what did not work in their communication program on the new requirements, particularly for those who are not associated with a large firm or association. Give me your perspective on the state of play right now on the communication process. What worked? What didn't? I would like each of you to comment, if you would.

Ms. THOMPSON. I will go first, if you like. We found that the IRS was very willing to listen to everything that we had to say, and their door was always open. So we felt that there was good communication. And we would expect that communication to continue, going forward. So we were very happy with the process.

Chairman BOUSTANY. Okay. Ms. Pickering?

Ms. PICKERING. H&R Block has a direct line of communication with the program office. We are able to have regular dialogue, feedback and input with the IRS, and can share that with our tax professionals.

However, it seems direct communication to the tax professional community is challenging for the IRS. Obviously, it is a large community, that's difficult to reach. I think the IRS is continuing to work on that, through the IRS forums and those kinds of things.

Chairman BOUSTANY. Thank you. Mr. Cinquemani?

Mr. CINQUEMANI. Perhaps the fact that we are located in Appleton, Wisconsin, rather than right here in Washington, D.C. might have some bearing on some of the communication that goes on day-to-day here within the IRS. But we have generally been very pleased with our ability to communicate with the Internal Revenue Service. We found the new registered preparer's office, in particular, very forthcoming and very helpful.

There was some rocky start kinds of things, which you would expect in a program of this magnitude, and wide ranging. But we are very pleased.

Chairman BOUSTANY. Thank you. Mr. Gary?

Mr. GARY. Yes. The National Association of Enrolled Agents has had a very good relationship with the IRS in formulating this process. We have had very good feedback and deliberations with them.

I think the area where we have some concern is that, as Mr. Williams had indicated in his earlier testimony, the public will not be notified of the process until far downstream. We believe the public should be on board now. They should know that their preparer should be signing their return, and should have a valid PTIN. And that is information that I think is a little bit lacking, and should be improved upon by the IRS.

Chairman BOUSTANY. That is helpful. Thank you. And Mr. Rothstein?

Mr. ROTHSTEIN. Thank you. Yes, the VITA community has been welcomed, and we have worked with the IRS on this process.

So we did feel like our comments were included through IRS and through other folks.

We do share the concern, again, about outreach and promotion, as was just mentioned. Our clients and other low and moderate-income families just don't understand what is going on, or what will happen in the years to come. So the sooner we get it out there, I think, the better.

Chairman BOUSTANY. Thank you. And, as you all know, on top of the \$64.25 PTIN application fee, preparers will have a required competency exam. There will be fingerprinting, continuing education requirements. So, just a basic question. In your perspective, how will these new costs affect preparers? And will we see an increase in prices, in reduced access? Is that a potential problem, with regard to consumers? I would like each of you to briefly comment on that, as well.

Ms. PICKERING. As we had discussed in our testimony, H&R Block is deeply concerned about the additional fees for the competency testing and the fingerprinting as well as the travel costs to get to testing sites.

We are wondering, if we will start losing tax preparers who want to end their careers because of the difficulty of complying with these regulations. Unfortunately, this would then result in limited service and fewer people available to prepare tax returns. If that were to happen in rural areas, then there is just that much less service for the members of that community.

So we are trying to be very supportive of our tax preparers, to help them as much as possible to navigate these requirements.

Chairman BOUSTANY. Thank you. Ms. Thompson?

Ms. THOMPSON. Okay. I am going to answer this from the general population, because, working as a CPA, we don't have the same testing and CPE requirements that the IRS has in place, because we already have our own testing and our own CPE, so we have our costs that are already there, and it is just not building on it.

But we do think that the IRS should be cautious about the total cost of the program for the individual tax preparers that are going to be involved in this. And that would include all aspects of it, whether it is the testing, whether it is the CE, whether it is the suitability check, whatever it might be.

Chairman BOUSTANY. Thank you. Mr. Cinquemani?

Mr. CINQUEMANI. As we have noted, many small businesses, particularly some of the preparers that only do between 50—like 50 and 100 returns, for example, have a difficult time passing that on. They got into the business and into a niche, so to speak, by preparing what they consider to be very good services at a very reasonable fee for people.

Some of them left a practice that they were in, and in retirement they have a great many people that they still service. They are aware of their clients' financial needs and restrictions. And they are concerned about having to pass those prices on. They develop relationships in this manner over such a long period of time, that it is difficult for them to deal, for small business in particular.

Chairman BOUSTANY. Thank you. Mr. Gary?

Mr. GARY. Yes. The enrolled agent community also is not affected directly by the pricing structure set up for registered return preparers. We are aware of the burden that the pricing might cause for individual practitioners. But, from an—the cost of education, we feel, is a cost of doing business, and we hope that the IRS will be very cognizant of the overall burden that is placed on registered return preparers in the form of fees.

Chairman BOUSTANY. Thank you. And Mr. Rothstein?

Mr. ROTHSTEIN. Yes. We share the same concerns about increases in prices. But at the same time, we feel that we would weigh more heavily on the knowledgeable and ethical returns, and would agree that the cost of doing business would supersede that.

Chairman BOUSTANY. Thank you.

Mr. ROTHSTEIN. Thank you.

Chairman BOUSTANY. Mr. Lewis?

Mr. LEWIS. Thank you, Mr. Chairman. I want to thank each one of you for being here today. I appreciated just listening to your testimony and reading your biographical sketch. I want to thank you for all of your great work in this area.

Mr. Rothstein, I want to ask you—I think you made it clear—I think four of you, at least—made it very clear that you support the program, as presented by the IRS. And maybe one of you has some reservation. But Mr. Rothstein, why is the program so important?

Mr. ROTHSTEIN. Thank you, Mr. Lewis, for the question. The program is so important because, as many—it has been discussed before today that nearly 8 in 10 families who are filing their taxes are either using software or are paying to do so.

The returns often times at our VITA sites—at the free tax sites and free tax clinics that we work with—what we see are people who have had bad returns done for several years. And the need for correction on those is pretty intense. And we feel that in this sector, there needs to be some benchmarks in there, and there needs to be a good registration process.

Also, this is a very important time of year for low and moderate-income families. It is often the most important time of the year for them, where they can see upwards of one-eighth of their annual income in a tax refund. So it becomes a very important and crucial time for them. And we think that that requires some serious education and sort of standings. Because right now there is a lot of confusion in the marketplace of who can perform what service, where people should go for what service. And we think that this would dramatically improve that.

At the state level, in California and Oregon, and even in—recently in Maryland, when these types of paid tax preparation regulations were passed, there were similar discussions. And one of the things that consistently came up was, as a hair dresser, you have to be registered, but as a tax preparer you don't. And, even though a bad haircut is obviously very bad, at the same time, a bad tax return is even worse.

Mr. LEWIS. Thank you. Mr. Rothstein, your testimony recommended that the IRS establish a central number and database for complaints. How would this help compliance?

Mr. ROTHSTEIN. Sure. I think what would happen is many tax filers, when they are looking for somebody to perform this service, would be able to do sort of their homework before they go into the shop or the store, and they would be able to look at the database and say, "Okay, within my zip code there are 10 preparers, and these are their credentials, and they have a satisfactory and good rating with the IRS right now. So 5 of the 10 of them, I am going to go and look at."

But right now, there is really no way to do that. You don't know, as a consumer, before you walk into the store, what kind of service you are going to get.

Mr. LEWIS. Thank you. Mr. Gary, I believe you traveled the greatest distance to be here. All the way from California, am I—

Mr. GARY. That is correct, sir.

Mr. LEWIS. From northern California?

Mr. GARY. Yes.

Mr. LEWIS. Okay. Well, thank you so much for being here. Do you think the average taxpayer understands the program?

Mr. GARY. Taxpayer? No, actually, I don't think the average taxpayer understands the program at all, and that is because the IRS has failed to do outreach to the public. Right now there is a significant number of people that go to—I think as Congressman Becerra pointed out—the ghost preparers, or the black market preparers. There is a significant number of tax returns that are filed where a preparer has been paid for their services, but they do not sign the tax return, and have not obtained a valid PTIN.

So, I think, with outreach to the public and making the public aware of their requirement to get a qualified tax return preparer in order to do their tax return, is vital.

Mr. LEWIS. Thank you very much. I thank each one of you for being here. You have been very helpful. I yield back, Mr. Chairman.

Chairman BOUSTANY. Thank you, Mr. Lewis. Ms. Jenkins?

Ms. JENKINS. Thank you, Mr. Chair. Thank you for having a second panel. And I would like to thank our panelists for all taking time to be here today.

Ms. Pickering, in your written testimony you raised the issue of working with the IRS to create a group PTIN registration renewal process as a way to simplify the administration and the new requirements. Can you describe how this group registration would function, how it would save time and money for the IRS, and what it would mean for your individual tax preparers?

Ms. PICKERING. Thank you. Let me start by describing the process that we went through this year to register our tax preparers. As I mentioned, we have 97,000 tax preparers, a portion of which are enrolled agents. And so, for them, as well as all the others, we needed to ensure that their PTINs were applied for.

Not all of our tax preparers have computers at home or Internet access. Not all of them have credit cards. Their personal situations vary. So H&R Block hosted registration parties. In the fall, we invited all of our tax preparers into the offices, so that we could provide access to computers, access to the online systems, and then use our corporate credit card to pay for their registration. It was important to us to support our associates, and so we were paying

for their registration, as well. This consumed a lot of time and energy around an action that simple.

We also had to modify our internal systems: our payroll, human resources, and tax preparation systems, so that we could have internal controls to ensure that our associates all had PTINs, so that when they were preparing their returns, the PTINs were all registered, as well.

With a group registration process, we would be able to renew, register, and create a file, ideally, that we would send to the IRS, and they could, through a batch process, update their files. This is a process that we worked out with New York the prior year—because New York has a state registration system—and it was a way to alleviate the extra time and administrative burden that was associated with this very fundamental process.

Ms. JENKINS. Okay, thank you. I would be curious if any of the other members of the panel feel like they would benefit from a group registration option.

Ms. THOMPSON. I am with a staff of 50, and we did have all of the individuals do the registration. They are all in our office every day, so we don't have the same type of issues that an H&R Block would, where they don't have access to the computer. So they actually had it as part of their workday, and we did have to monitor at the end that they did have their PTINs, and they were ready to go at the beginning of the season.

Ms. JENKINS. Okay. Anybody else want to comment?

[No response.]

Ms. JENKINS. All right. One of the goals for testing and tax return checks is to catch bad actors in the tax return preparer world, as a means to improve compliance. However, the IRS has not created a clear measurement for taxpayer compliance, and there is no defined compliance and enforcement program yet in place when the bad actors are identified.

So I just would like all of you maybe to comment briefly in detail any concerns in these areas, and any recommendations that you might have to improve the program in your areas. Ms. Pickering?

Ms. PICKERING. I would like to start. H&R Block has commented recently on the EITC due diligence requirements, and some of the challenges that we see with that program, specifically when the IRS is conducting the EITC audits. Their audit standards have not been published, and the auditors all have subjective approaches to the implementation of their standards.

And so, we would like to have published standards that say, "This is," for example, "what the EITC due diligence guidelines and standards must be, and when we are conducting an audit it must comply with these certain attributes." When we have an objective, measurable standard like that, we will be able to perform to that standard.

Ms. JENKINS. Okay. Any other thoughts?

Ms. THOMPSON. I would think one of the things that David Williams had mentioned was the 10,000 letters and the 2,500 office visits. Maybe there is some work that can be done in that area to better target the individuals that are actually the bad actors. That might be helpful.

Ms. JENKINS. Okay, thank you. I yield back, Mr. Chairman.



Mr. CINQUEMANI. I would like to make one comment with regard to that, if I may, please. I think we need to keep in mind here that basically what we are doing is regulating a large population of those who are already compliant, or are certainly interested in already being compliant, so that when it comes to looking at those who are unscrupulous, and even incompetent, they are flying under the radar of a lot of the systems.

And I don't know how the return preparer's office can be held responsible for ferreting those people out. It would seem to me that that would be an investigative and enforcement function of perhaps the criminal investigation division of the Internal Revenue Service.

Chairman BOUSTANY. Thank you. Mr. Becerra?

Mr. BECERRA. Thank you, Mr. Chairman. Thank you all for your testimony. Mr. Rothstein, let me ask you a question. I think Mr. Williams, in his testimony, said that one of the concerns that many have raised—and you being one of them—is that we need to make sure that we establish some form of public database of preparers, so we can give the consumer a chance to understand who— which preparers are in good standing, who has been the bad apple and who has done work right.

Is it your sense that IRS is moving forward with that proposal to establish such a database?

Mr. ROTHSTEIN. My sense is that it is definitely in their time frame and framework to do so. We think the sooner, the better, obviously. And our hope is that the more data that is available on that database, the better, as well. We—

Mr. BECERRA. So the sooner the better?

Mr. ROTHSTEIN. The sooner the better.

Mr. BECERRA. So there is—IRS says they are trying to establish that database. You are not saying no, you are just saying try to get it sooner than later?

Mr. ROTHSTEIN. Absolutely.

Mr. BECERRA. What about—you have another recommendation about providing transparency and disclosure of paid tax preparer fees in a manner that would be similar to what we see right now with a credit card fee disclosure box.

Do you know if IRS is moving forward with that recommendation?

Mr. ROTHSTEIN. Representative Becerra, my sense is that I have not heard that being the case. I would follow up with the IRS and ask. But, to my knowledge, no, they are not.

Mr. BECERRA. We can follow up on that. I think that is a good idea, again, to give consumers a chance to understand. It is the buyer beware sort of caution, that you give consumers as much information in advance, so they can make decisions, so we don't have to try to remedy problems later on. So thank you for that.

Mr. Gary, quick question for you. Do you think that preparers should be required—these preparers that would get registered—should be required to take the same type of test for preparation of individual tax returns as you and your folks who are enrolled agents do?

Mr. GARY. Yes, I do. Thank you for the opportunity to address that question.

Mr. BECERRA. And if you could, do it quickly—

Mr. GARY. Yes.

Mr. BECERRA [continuing]. Because I don't have much time.

Mr. GARY. The IRS has a proven test for individual tax competence, and that is Part I of the special enrollment examination. It would save the taxpayer money, it would save the government money, if the Part I were used.

Mr. BECERRA. And I wish we had more time, because I think many people might be watching this, and not quite understanding what the difference is between the different types of folks who prepare. You've got CPAs who probably are as skilled and trained as you can find, when it comes to someone who could prepare a tax return for you. You have got enrolled agents who are also skilled and have been certified by the IRS. And so you've got a lot of different levels. You've got attorneys who can do this, as well. And then you've got organizations like H&R Block, who have been doing this for decades.

And so, it would be helpful, I think, for consumers to understand what the difference is, so they know what they are getting for the money.

Mr. Cinquemani, if I could ask you a question, I am a little concerned by some of your testimony. I appreciate that you are here, I appreciate your membership being here, but I am a little concerned that you make it sound like what we are trying to do through this registration and testing of qualifications might drive someone out of business.

You mention, for example, the small operation, someone who does 50 to 100 returns in a year. I don't think anyone wants to cause difficulty for someone, especially who is a small business man or woman who does a few of these.

But my understanding is that the fee, the registration fee to get registered for these preparers, would be \$65. Say you do 50 to 100 of these returns. That is a dollar or two more than you would have to charge per return if you are one of these preparers who is a small operation. To me, that is a small price to pay to make sure that that consumer going to that small operator is certified.

Mr. CINQUEMANI. Representative Becerra, the context in which that comment was made with regard to putting people out of business was with respect to Section 10.3(f)3 of circular 230, which basically states that a registered return preparer cannot give advice, except in the preparation of a tax return, okay?

Mr. BECERRA. Okay, and I understand that. And I would—and I share some of your concern, because often times folks come in with lots of questions that go beyond, "Here are my documents, prepare my tax return for me."

But at the same time, rather than try to—let's move forward, working together, to make sure that people who are qualified are able to give the advice that consumers need—

Mr. CINQUEMANI. Agreed.

Mr. BECERRA. But I think what we are trying to do is finally stop this pervasive underground—I call it a black market operation that is out there. They are open one week and they are gone the next. And a lot of folks pay good money to get good advice.

And so all those small guys who do 50 or 100 and keep to what their skill level is, and their qualifications are, I want to put

them—elevate them. But the guy that goes after that 101st person and causes them to be audited unfairly, we should descend on them with a hammer so hard, that they become the example for the rest of the industry.

So I hope you will continue to be engaged in your membership, because I think—

Mr. CINQUEMANI. Absolutely.

Mr. BECERRA [continuing]. Every one of you provided valuable testimony.

Mr. CINQUEMANI. Absolutely, we will.

Mr. BECERRA. I thank you very much, Mr. Chairman—

Mr. CINQUEMANI. And we are very supportive of the process, as well.

Mr. BECERRA. Thank you. Thank you, Mr. Chairman.

Chairman BOUSTANY. Thank you. Mr. Reed.

Mr. REED. Thank you, Mr. Chairman. Mr. Cinquemani, I want to give you an opportunity, because I am interested in the comment you made about—that the advice that will no longer be able to be provided—I think you were going to go down that path in response to my colleague's question, previously.

So what advice would they not be permitted to do after this is implemented? And could you give me some examples of what that type of advice is?

Mr. CINQUEMANI. Yes. In the way it is worded currently, someone can give advice in terms of where someone walks in with a shoebox full of receipts, and you say, "Well, you take—this belongs on this line of the return, that belongs on that line of the return."

If someone during the year comes up and says, "I want to trade my dump truck for a D9 bulldozer"—

Mr. REED. Right, yes.

Mr. CINQUEMANI [continuing]. They are not permitted to give that kind of advice, under the provision the way it is currently stated. If someone has an emergency, a death in the family, and they need advice on a final 1040 or 1041 return, you can't give that kind of advice. If someone calls up and has a concern about being compliant over one issue or the other, that is giving advice.

Mr. REED. And so, under these proposed regulations, they would no longer be able to be—

Mr. CINQUEMANI. That particular provision—

Mr. REED [continuing]. That pre-tax advice, and that type of—

Mr. CINQUEMANI. Yes. And there is an easy fix to it.

Mr. REED. And what is the fix?

Mr. CINQUEMANI. The fix is just to basically say that they can give advice, but that their advice is not deemed privileged, as that communication is—

Mr. REED. Attorney-client type stuff?

Mr. CINQUEMANI. Yes.

Mr. REED. Okay. All right, I appreciate you clarifying that for me.

The other inquiry I wanted to make of the panel, you heard—maybe you were here when I was asking the Agency a question about the rural areas. I come from a rural district of New York. Do you see any concerns about impact that this would have on

servicing residents, citizens in rural areas of the country, maybe from an H&R point of view?

Ms. PICKERING. Thank you for asking that question. H&R Block is very concerned about that. With over 3,000, 4,000 offices in rural areas, as well, we have 170 tax preparers in international areas, where they serve U.S. military bases. We don't know how we will get those preparers through the competency examination.

We did hear David say that it is something that they want to understand—

Mr. REED. Work on, yes.

Ms. PICKERING [continuing]. And work on, but it is clearly an area that is of big concern for us. What we don't want to have happen is that we are unable to get our preparers registered and then, as such, we are unable to serve those communities that rely very heavily on this—

Mr. REED. So, from your point of view, is it legitimate, fair to say, that it is a—this is a legitimate issue, a legitimate concern, and needs to be addressed, in your opinion, prior to full enactment of these provisions?

Ms. PICKERING. I would say that wholeheartedly. This is a legitimate concern that we need to address.

Mr. REED. And then—I am always trying to be practical—do you have any ideas on how we could address that, and then solve that issue?

Ms. PICKERING. Our recommendation would be to let H&R Block continue the program and accept our program—certify our program.

Mr. REED. As equal. Okay. Any other ideas on how to address that concern from any other members of the panel?

[No response.]

Mr. REED. Do other members of the panel think that is not a concern? Anyone on the panel?

[No response.]

Mr. REED. All right. All right, thank you, Mr. Chairman. I yield back.

Chairman BOUSTANY. Thank you. I want to thank all of you for your testimony, and being patient, and answering our questions. Please be advised that Members may have additional questions that they will submit. Those questions and your answers would be made part of the official record.

Again, thank you. I think this has been a very helpful hearing for us, and as we go forward with this program. The subcommittee now stands adjourned.

[Whereupon, at 11:24 a.m., the subcommittee was adjourned.]

## **QUESTIONS FOR THE RECORD**

Rep. Boustany's for David Williams

**House Committee on Ways and Means, Subcommittee on Oversight  
Questions for the Record  
July 28, 2011 Hearing on IRS Paid Tax Return Preparer Program**

- 1. Jim White from GAO testified that the IRS does not yet have a clear plan to test whether this program actually increases taxpayer compliance. When this Subcommittee held a hearing on the \$106 billion lost in recent years to improper payments of refundable tax credits, the IRS claimed that this program would solve a large part of the problem. Describe how the IRS plans to judge the success of this program? For instance, do you anticipate it will succeed in reducing EITC improper payments? If so, what are IRS's reduction targets?**

Measuring performance is a critical component of any program, and the IRS must monitor whether the new return preparer initiative is adding value to tax administration. We are developing long-term strategic measures that will enable the Service to assess the effect of the program. We are working to establish a baseline for measures in 2012 and to develop a more customized means to measure the tax administration impacts of the preparer program over the next two to three years.

Developing a comprehensive model for measuring the program's overall effect on compliance, in both the long and short term, is essential to determining future changes and improvements to the program, the processes and the underlying policies. We anticipate developing an initial set of short-term measures that rely on existing IRS data. At the same time, we are looking at ways to develop more comprehensive metrics that more directly capture the program's effects.

With regard to the program's affect on erroneous EITC payments, we believe there will be a significant impact. However, we are unable to estimate a specific impact until we have more experience with the program. As noted at the hearing, we are beginning an ongoing process of testing various strategies to identify preparers who are responsible for inaccurate returns and to develop appropriate treatments for those preparers. In addition, we are seeking ways to address "ghost" preparers - individuals who try to avoid complying with the program's requirements. As Jim White noted in his testimony, this work will take time and concentrated research - research the IRS has already begun. As outlined in our earlier testimony, there are a number of other initiatives underway that we believe will decrease erroneous payments, including a requirement that preparers attach the due diligence check sheet to an EITC return.

- 2. The IRS has committed to complete its strategic plan by the end of July 2011. We are now in August – has the IRS completed this plan? If so, please provide**

**a copy of the newly prepared plan to the Subcommittee. If not, when does it plan to do so?**

The Return Preparer Office draft strategic plan was completed in July. The plan is currently undergoing final internal review. A draft outline has been provided to TIGTA and GAO and we anticipate the plan will be approved and in place for FY12. We welcome the opportunity to meet with the Committee and discuss the plan when it is final.

**3. Explain the costs the Paid Tax Return Preparer program will impose on individual return preparers. On top of the PTIN application fee, preparers will have a required competency exam, fingerprinting, and continuing education requirements. What is the estimated annual cost of compliance for the average tax return preparer?**

The fees will vary for each individual depending on several factors. Additionally, some fees will be paid one time, some will be recurring, and some fees will not be set by the IRS, but by independent education providers. An overview of the estimated new fees is provided in the following chart:

Overview of New IRS Fees	One time fees		Recurring fees	
	Background Check	Test	PTIN	Continuing Education
CPAs	n/a	n/a	\$64.25	n/a
Attorneys	n/a	n/a	\$64.25	n/a
Enrolled Agents	n/a	n/a	\$64.25	n/a
Registered Tax Return Preparers	\$60-90	\$100-125	\$64.25	various
Supervised Preparers and Non-1040 Preparers	\$60-90	n/a	\$64.25	n/a

Continuing education (CE) providers offer a wide range of options for obtaining course credits, ranging from online courses for \$10-15 per hour to more costly in person seminars. Registered Tax Return Preparers will be required to obtain 15 hours of course credits, but can select approved course from across the range of course formats. Certified Public Accountants, Enrolled Agents, and attorneys have existing CE requirements and will not incur additional costs for education.

**Does the IRS have an estimate of how all of these new costs will be passed on to the sixty percent of taxpayers who hire paid preparers (i.e., How much more will it cost someone to have his or her tax returns prepared?)**

Because of competition among tax preparers (especially “Registered Tax Return Preparers” and “Supervised Preparers”, who tend to be the types selected by non-business taxpayers, the IRS does not expect a significant increase in the cost for tax preparation overall due to these requirements. However, there are too many variables to permit us to estimate a fee increase at this point in time.

**4. Why will IRS require attorneys, CPAs, and Enrolled Agents to submit to an annual tax check? Is there evidence that tax debt by these professionals has created problems in the past?**

In a 2009 review<sup>1</sup>, TIGTA reported that five percent of preparers were not compliant with their own tax obligations and made a recommendation that the IRS, “Establish a requirement that paid preparers be compliant with their own federal tax filing requirements in order to be allowed to prepare tax returns for others for a fee.”

We concurred with the recommendation and agreed to address the concern as part of the ongoing Return Preparer Review.

**5. To date the IRS has raised roughly \$46 million (\$64.25 x 717,000) through application fees by issuing 717,000 PTINs. Explain the program’s anticipated budget, and whether you anticipate these annual application fees will cover all of the program’s costs.**

Of the \$64.25 collected from preparers for the PTIN application fee, the IRS receives \$50 to cover program costs. The additional \$14.25 is retained by the registration system vendor. To date, we have processed 722,600 PTIN applications and anticipate collecting approximately \$36 million in FY11. The IRS anticipates a carryover into FY12 of approximately \$16 million in return preparer user fees. We anticipate needing these funds in subsequent years to cover future program costs that will be higher than those incurred during 2011, such as the outreach campaign for taxpayers which has not yet begun.

**6. How much has the program cost to date, including the contracts with Accenture, Prometric, and other outside companies? Please provide a breakdown of program expenses to date.**

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<sup>1</sup> *Inadequate Data on Paid Preparers Impeded Effective Oversight*, TIGTA 2009-40-098

The breakdown of our expenditures as of August 1 is covered in the following chart:

RPO PROGRAM COSTS		FY 2011
<b>Labor &amp; Benefits</b>		
- Labor & Benefits	\$	3,400,000
<b>Subtotal</b>		<b>\$ 3,400,000</b>
<b>Non-Labor</b>		
- Contract Support	\$	13,920,164
- Travel	\$	550,000
- Communications / Marketing	\$	200,000
<b>Subtotal</b>		<b>\$14,670,164</b>
<b>TOTAL COSTS</b>		<b>\$18,070,164</b>

SUBMISSIONS FOR THE RECORD

The Ohio Society of CPAs





August 11, 2011

Congressman Charles Boustany  
Chairman, Subcommittee on Oversight  
Committee on Ways and Means

**RE: July 28, 2011 hearing on IRS paid tax return preparer program**

Dear Chairman Boustany:

On behalf of the 22,000 members of The Ohio Society of CPAs (OSCPA), we appreciate the opportunity to comment on the new IRS paid tax return preparer program. Since the Service's Return Preparer Review process was first introduced in June 2009, OSCPAs has provided feedback to the IRS and Ohio's Congressional delegation on various components of the program, including the annual PTIN registration and associated fees, enforcement structure and the need for tax simplicity.

Across its membership, OSCPAs members advise individuals, partnerships, corporations and other taxpayers on federal, state, local, and international tax matters and supports adherence to high professional standards for all tax practitioners, particularly its members. We commend the IRS for seeking to better serve the public through increased compliance and ensuring uniform and high ethical standards of conduct for tax preparers, a goal we understand and share.

We also appreciate the IRS' adoption of an exemption for supervised preparers from testing and continuing education, many of whom are CPA-exam qualified students preparing for the CPA exam. That said, given the goal is to provide better service to taxpayers we continue to have concerns about what we believe is a minimal public benefit derived from the program thus far, specifically in terms of what we believe is the inverse cost/benefit ratio given. In 2011 approximately 717,000 registered paid preparers are currently registered. The GAO estimates that the mandatory PTIN registration will generate \$51-77 million in fees alone. During tax year 2011, 19 preparers were found to have a pattern of completing and signing incorrect or fraudulent tax returns for paying clients. Those results simply do not justify the revenue raised under the current structure. The amount generated from the registration in just the first year should provide more than adequate funds to develop the system. The need for ongoing, annual revenue is not justified as the IRS already had funding to monitor and discipline preparers. The educational component should pay for itself through tuition fees.

**PTIN Mandate:**

We hope the now mandatory use of the PTIN as a preparer identifier will minimize confidentiality concerns related to what could have been an alternative: the use of preparer social security numbers. That said, it is our view that a mechanism is in place to efficiently and effectively cull preparer data from, for lack of a better term, the PTIN database (even though the IRS was previously unable to do so based on preparers social security numbers, CAF numbers or PTIN numbers) Given the high concentration of errors in the Earned Income Tax Credit and other refundable tax credits, a more incremental, targeted and cost efficient approach aimed at taxpayers and the tax preparers who service these problem areas may have resulted in better overall compliance, at least in the short term.

**Fee:**

Our concern with the annual fee is two-fold: first, fees associated with the registered tax return preparer program should only be used to support and modernize the IRS' tax preparer tracking system and provide for a measurable compliance mechanism. Second, the amount of the fee should not be at a price point that discourages compliance as it could result in a "black market" industry of tax preparers unwilling to be subject to regulation or education requirements. More importantly, we question whether the significant additional costs and bureaucracy associated with this proposal will yield any significant benefit as ethical behavior cannot be legislated. Those individuals, including ex IRS employees that chose to prepare returns exaggerating deductions, omit income or claim credits they are not eligible for will continue to do so regardless of a PTIN registration requirement.

**Education and Testing requirement:**

Education requirements should not cater to and thus only protect the lowest common denominator of taxpayer. Registered tax return preparers who are subject to minimal testing, such as a 1040 tax return, should be permitted to prepare only those returns they were tested on. If the goal is to measure and ensure competency errors, testing must mirror the material on the returns. Not doing so is akin to testing a driver only on how to turn a car on and then providing him/her with a driver's license. Further, technical competency does not guarantee ethical behavior. It is not clear nor has there been empirical evidence presented that returns prepared by someone other than the taxpayers themselves contain a disproportionate number of technical errors. The mere fact that the same data provided on a test basis to several preparers created numerous different answers only points to the ambiguity and complexity of the tax code.

As the Service considers developing additional competency examinations, it is our hope that serious consideration is given to subjecting non legacy Circular 230 preparers to the Enrolled Agent exam. Additionally, IRS employees should be subject to the same competency testing.

**Enforcement:** OSCP respectively disagrees with the IRS' presumption that the tax preparer regulations, and specifically the mandatory use of the PTIN, will "increase tax compliance and allow taxpayers to be confident that the tax return preparer to whom they turn for assistance are knowledgeable, skilled and ethical." This statement creates an unrealistic expectation among taxpayers that the mandatory use of PTIN not only signals competency of tax preparers but that it will stop them from committing fraud. Educating taxpayers about what to look for when selecting a tax preparer is a better alternative.

Under the current structure it is critical for the Service to develop and communicate a framework outlining how the tax preparer regulations will improve taxpayer compliance, specifically as it relates to the problem areas of incorrectly claiming the Earned Income Tax Credit and other incorrect refund reporting. We recommend using the enforcement mechanisms currently in place, including disciplinary and criminal action.

**New designation:**

Anyone eighteen years or older who registers for a PTIN, passes the return preparer competency examination and tax compliance and suitability checks will be designated Registered Tax Return Preparers. Confusion in the marketplace is a serious concern for our members. We appreciate the Service's mandate for a disclosure statement when a paid preparer is using the new "designation." The taxpaying public also should continue to be made aware of the higher standards required for licensure for legacy Circular 230 preparers. To avoid confusion among the public, we also recommend that the abbreviated "RTRP" not be permitted to be used under any circumstances as it does not adequately differentiate between the more commonly used CPA, JD, or EA.

**Tax simplicity:**

It is our final recommendation that serious consideration be given to tax simplicity. If the complexity of the tax code, particularly of the EITC, is causing a high rate of errors among preparers then one must look at how to ease the compliance burden that exists for all taxpayers. Simplifying the tax code is an important step towards improving voluntary compliance and accuracy.

Again, thank you for allowing us to comment on the new paid tax return preparer program. Should you have any questions or need clarification on any of the comments above, please contact Amy Mignogna, The Ohio Society of CPAs' director of tax policy, at 800.686.2727.

Respectfully submitted,



J. Clarke Price, CAE  
President & CEO



J. Matthew Yuskewich, CPA  
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National Society of Tax Professionals



"Service to the Tax Profession"

**WRITTEN TESTIMONY OF GRETA BARNCORD, EA  
ON BEHALF OF  
THE NATIONAL SOCIETY OF TAX PROFESSIONALS  
BEFORE THE  
COMMITTEE ON WAYS AND MEANS  
SUBCOMMITTEE ON OVERSIGHT  
THE UNITED STATES HOUSE OF REPRESENTATIVES  
HEARING ON  
NEW IRS PAID TAX RETURN PREPARER PROGRAM  
JULY 28, 2011**

Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify on the new IRS Paid Tax Return Preparer Program. My name is Greta Barncord and I am the President of the Board of the National Society of Tax Professionals (NSTP). Our organization is comprised of tax practitioners with varying types of professional credentials and different levels of practice. Thus, we are uniquely qualified to offer our membership's views on the IRS's plan for regulating tax return preparers.

We have many concerns about the program that we have expressed to the IRS throughout the implementation process. As many elements of the plan are in place, we will not revisit those myriad concerns in this testimony. Rather, we would like to focus our remarks on two issues that remain problematic: the fair treatment of experienced, professional preparers; and the continuing problem of nonsigning preparers, who will be able to avoid the reach of the IRS's current preparer regulation plan.

#### **Competency Exams**

We remain concerned that competency testing will be a barrier to entry for unenrolled preparers, many of whom now work with underserved populations in rural areas and with lower-income taxpayers. Many unenrolled practitioners are highly competent and serve their clients well. If they are forbidden to practice going forward, the existing enrolled community could not absorb the overwhelming number of new clients. Tax preparation fees would go up. Many taxpayers could be underserved, and the IRS workload and staffing expense would also increase dramatically due to the overflow. For these reasons, we continue to recommend the "grandfathering in" of paid return preparers with 3-5 years experience and history of signing accurate returns.

Competency testing is set to begin in October of this year. We believe the IRS should carefully track the pass/fail rates of experienced paid preparers and, if there are high initial failure rates, the IRS should again consider some sort of grandfather program for experienced tax preparers. We suggest the model used by some State Bar Associations for "waiving in" out-of-state professionals. That is, allow a tax preparer to waive in to the program without testing if they can show they have been practicing for 3 to 5 years and have been regularly signing tax returns during that time. A similar rule already is in place for revenue agents who have worked for the IRS for 5 years. Circular 230 allows them to obtain the Enrolled Agent credential without testing. In short, there should be some method of becoming grandfathered in based on a preparer's demonstrated professional experience.

### **Nonsigning Preparers**

While we understand the IRS's frustration with misconduct by some tax preparers, we believe the new PTIN registration requirement and competency testing program will not address many of the abuses the IRS is seeking to prevent—primarily, unsigned, erroneous and fraudulent returns. The focus of the IRS's regulation plan so far has been on legitimate, signing paid tax preparers. The IRS must concurrently implement a comprehensive, aggressive plan to stop return preparation by nonsigning preparers who do not register for a PTIN, do not sign the returns they prepare, and who do not comply with the new testing, education, or ethical requirements.

The IRS has indicated that it is working to identify returns prepared by a nonsigning preparer but filed by the taxpayer. This strategy clearly is not enough. At the same time, the IRS has been making compliance visits to above-board, signing preparers around the country in a program that began early this year. The NSTP recommends that the IRS shift its resources, particularly for these preparer visits, to investigating and visiting tax preparation offices that are run by nonsigning, underground tax preparers.

Taxpayers who submit ostensibly self-prepared returns also should be required to certify by some type of jurat on both print and electronic returns that they did not pay a nonsigning preparer to complete the return. The statement should be included in both hand-written and paper returns and also should be incorporated into tax preparation software so every self-prepared return includes the affirmation. This requirement should be enforced by strict monetary penalties on taxpayers who fail to report nonsigning paid preparers and by criminal penalties for the noncompliant preparers, when identified.

In conclusion, return preparer regulation will not be successful unless the most serious noncompliance problem, that of fly-by-night, underground return preparers, is addressed with the same commitment, level of resources, and comprehensive strategy which is now in place for legitimate paid tax return preparers.

We commend the Committee for holding this hearing to explore the issues concerning the new IRS Return Preparer Regulation Program. Thank you for consideration of our views. I would be pleased to address any questions you may have. I can be reached by phone at (407)365-6204 or by e-mail at [Greta@nstp.org](mailto:Greta@nstp.org).

Respectfully submitted,


Greta Barncord, EA  
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**About the NSTP**

The National Society of Tax Professionals (NSTP) is a nonprofit organization founded in 1985 and is made up of approximately 5000 members who are certified public accountants, attorneys, enrolled agents, financial planners, and other tax professionals. About one-half of our members are unenrolled preparers. NSTP supports the tax professional community with educational programs designed to enhance professional ability and knowledge. Every NSTP Member is required to abide by the NSTP Code of Professional Conduct which is designed to promote high standards of competence and ethics within the profession and to promote mutual respect, cooperation and communication between the Internal Revenue Service and tax professionals. For more information, visit [www.nstp.org](http://www.nstp.org).

Center for Fiscal Equity



**Comments for the Record**  
**House Ways and Means Committee**  
**Subcommittee on Oversight**  
**Hearing on New IRS Paid Tax Return Preparer Program**  
Thursday, July 28, 2011, 9:30 AM

By Michael G. Bindner  
Center for Fiscal Equity

Chairman Boustany and Ranking Member Lewis, the Center for Fiscal Equity applauds the efforts by the IRS to improve tax compliance and assist taxpayers, however we must comment that these efforts are treating the wrong disease. For too many families, the requirement to complete income tax forms is an unnecessary burden. There are simply other ways to channel needed income security assistance to working families and exempting middle class retirees from taxation.

The Center for Fiscal Equity has a four-part proposal to replace the current system with one that will keep most employees from having to file taxes without abandoning the benefits of progressive income taxation for higher income families. The key elements are

- Value Added Taxes (VAT) to fund domestic military and civil spending;
- VAT-like Net Business Receipts taxes to fund non-Old Age and Survivors(OASI) entitlement spending and to provide a vehicle for both tax benefits, such as a consolidated Child Tax Credit and the continuation of the health care exclusion, as well as any state-level efforts to shift entitlement funding to tax benefit funding (ex. public and private charter schools);
- OASI taxes to allow an income-sensitive benefit based on the employee tax, but with the employer tax credited as an average to move redistribution to the collection end and an increase to the income cap to improve solvency and benefits, possibly in exchange for limited personal accounts invested in insured employee-ownership (rather than in Wall Street assets where they have little control or influence); and
- Income surtaxes, to include distributions from inheritance, to assure period based system progressivity and to fund overseas, naval sea and strategic military spending, net interest on the debt, repayment of the OASI trust fund and any transition costs to personal retirement accounts.



As the committee can easily see, the adoption of a VAT and an NBRT would eliminate the need for most families to file taxes, while not appreciably increasing the requirements on business over and above what is required now – although some firms will continue to use the services of financial service professionals or require the use of in-house resources, which they would likely require anyway to meet their other fiduciary responsibilities to shareholders, lenders or customers. Personal accounts funding employee ownership would also move this source of saving from the public sector to direct investment in and employee control of the workplace (with employees rather than business owners making the decisions on alternative funding of services under the NBRT).

Fixing the payment of net interest, strategic and overseas military spending and debt repayment to the income surtax provides an incentive to run a budget surplus and decrease military adventurism in order to reduce or eliminate this tax in the long term.

The ability to incur a large debt came not from the ability to levy taxes generally, but to tax higher income individuals, since doing so impacts savings more than consumption and thus does not directly decrease economic activity. Increasing taxes on high income individuals is actually a job saver because it removes the incentive for business owners and employees to decrease worker wages in the name of productivity (without making operations more efficient). Such faux productivity gains decrease economic growth, because without exploitive credit terms, workers cannot afford the goods they produce.

Finally, higher taxes on the savings sector may serve to prevent asset price inflation, which results when too many dollars chase too few sound investment opportunities. History shows that most asset bubbles follow immediately from the savings sector having too much money. Until employee-ownership replaces speculation in funding investment in plant and equipment, some form of progressive income taxation is essential to keep the economy from overheating.


**Contact Sheet**

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**Hearing on New IRS Paid Tax Return Preparer Program**

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears:

This testimony is not submitted on behalf of any client, person or organization other than the Center itself, which is so far unfunded by any donations.

  
**National Community Tax Coalition**



**National Community Tax Coalition**

*a project of the Center for Economic Progress*

August 16, 2011

The Honorable Charles Boustany  
 Chairman  
 U.S. House Ways & Means  
 Subcommittee on Oversight  
 U.S. House of Representatives  
 1102 Longworth House Office Building  
 Washington, DC 20515

The Honorable John Lewis  
 Ranking Member  
 U.S. House Ways & Means  
 Subcommittee on Oversight  
 U.S. House of Representatives  
 1139E Longworth House Office Building  
 Washington, DC 20515

Dear Chairman Boustany & Ranking Member Lewis:

As the nation's leading coalition of non-profit, voluntary entities providing free tax preparation assistance and services to low-income individuals and families, we would like to thank you for your leadership in recently holding a Congressional hearing on July 28<sup>th</sup> on the new IRS paid tax return preparer program. Please find attached formal written comments from the National Community Tax Coalition (NCTC) for the Committee's review. Additionally, we wish to express our gratitude to the Committee for inviting David Rothstein, who serves on NCTC's Steering Committee and is the co-chair of NCTC's Public Policy & Research Working Group.

The nation's volunteer income tax assistance (VITA) programs provide critical tax preparation and other asset development services to America's low-income taxpayers in underserved populations and result in continued cost-savings to the federal government every year. VITA sites offer free tax assistance to low- to moderate-income taxpayers who cannot afford professional assistance and who want to learn about financial education, opportunities to save, and to access other essential services and supports offered in their communities. More than 52,000 VITA volunteers prepare basic tax returns for low-income taxpayers with a focus on at least one specific underserved group, including persons with disabilities, non-English speaking persons, Native Americans, rural taxpayers, and the elderly. During tax year 2010, VITA centers prepared 1.3 million tax returns across 5,700 sites and brought back approximately \$1.9 billion in tax refunds to taxpayers whose average Adjusted Gross Income (AGI) was \$21,000.

In conclusion, we are appreciative of the Committee's continued interest in the quality of tax preparation services and the importance of improving tax compliance. We look forward to continuing to work with the Committee to ensure expanded access of taxpayers to affordable, accurate, and high-quality tax preparation and assistance programs.

Sincerely,

A handwritten signature in black ink that reads "Jackie Lynn Coleman".

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## **Written Comments on Tax Preparation & Paid Preparer Regulation**

**Submitted by the National Community Tax Coalition to the**

**U.S. House Ways & Means Subcommittee on Oversight**

**11 August 2011**

The **Volunteer Income Tax Assistance (VITA)** initiative is an IRS program designed to help low and moderate-income taxpayers complete their annual tax returns at no cost. Since its inception in the 1970s, VITA programs have evolved and flourished. Every year, beginning in December and continuing until mid-January, certified student volunteers receive training from the IRS to help prepare basic tax returns in communities across the country. VITA sites are generally located at community and neighborhood centers, libraries, schools, shopping malls, and other convenient locations. Clients are not charged fees for this service. VITA sites generally assist people who have income below \$49,000 or are eligible for refundable tax credits designed to promote work, access to higher education, and family support.

VITA programs already undergo stringent training requirements and regulations. First, VITA services are provided free of charge to all low- and moderate income tax payers who meet the income eligibility requirements to receive such services. Second, regardless of credentials or educational backgrounds, all volunteers must undergo rigorous testing and training each and every year. Additionally, more tests and training is required for more complex return processes. The system is heavily monitored through the use of EFIN numbers by the Internal Revenue Service.

VITA programs are highly committed to increasing the use of electronic tax filing, strengthening quality control, enhancing training of volunteers, and significantly improving the accuracy rate of returns prepared. We were extremely grateful to Congress for initiating the Community VITA Matching Grant Assistance program in FY 2008 to assist VITA sites in meeting these goals and also in expanding outreach services to targeted underserved and high-risk populations (including taxpayers living in rural areas, taxpayers with disabilities, taxpayers with English as a Second Language, Native American taxpayers, and the elderly).

### **NCTC's Concerns regarding the Implementation of the IRS Paid Preparer Certification Process**

NCTC commends the IRS for undertaking the arduous effort of regulating, educating, and tracking paid tax preparers. This process is critical for both the tax preparation sector and the millions of clients who use their services. NCTC does, however, wish to share concerns with the Committee about the implementation of the registration process and interpretation of guidelines related to this initiative. Mainly, our concerns are related to the infusion of enforcement measures for dealing with



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non-compliant paid preparers, as well as the administering of outreach/education/awareness efforts to ensure that consumers will come to understand these new changes.

**One concern relates to paid tax preparers as they register with the IRS.** The estimate from the IRS indicates that more than 100,000 paid preparers have yet to register. At the same time, this last year has shown us how a number of “fly-by-night” paid tax preparation set-up for a few weeks, charge high fees, and do subpar and error riddled returns. At its worst, the preparers are totally disingenuous, focusing on elderly or low-income filers, selling them services about transferring funds, recovery rebates, and exaggerated EITC and Social Security claims. A recent wave of claims from companies that they are the IRS or “associates” of some fashion.<sup>1</sup> Attorneys General are filing lawsuits on behalf of consumers and the IRS is issuing warnings about being imitated. But the damage has been done and flies in the face of this new registration program.

The consumer community is concerned about enforcement, not just after these fraudulent returns are prepared but stopping them before they occur. These scams and any method of undercutting the registration process, have ripple effects onto taxpayers. They will be less likely to file taxes, seek help, or work with the IRS once they have been victims of a scam. In short, it is imperative that we have a deliberative plan to move the non-compliant paid preparers into the regulation process.

**A second issue of concern for NCTC deals with who is covered by the regulations.** To be clear, we strongly believe that the litmus test for who should be registered and in continuing education is the person that the taxpayer believes is their tax preparer. The guidance from the IRS on this is helpful, but we are concerned about how it will be enforced and monitored. Clients who visit free tax sites and work with Legal Aid commonly report that the bulk of their return is done by a clerk, often on a computer, and then the return is signed by a paid preparer at the end who barely looks at the return. Again, the non-signor guidance is helpful, but we implore this litmus test of “who the client thinks is doing their taxes,” to be used as a benchmark. Straying far from this benchmark will render the testing and continuing education for registered tax preparers ineffective. Additionally, we think it is vital that the test for certification be no less stringent than SEA individual 1040 section of the exam. The stronger the test, the better the quality of returns.

**A third issue surrounds promotion and outreach of this new program.** The majority of low- and moderate-income families are unaware of the new registration requirement. They do not understand what these credentials mean and how this program matters to them. Thus, a large concern is that the price of paid tax preparation will increase based on this process but with no real explanation for consumers. This is also a consideration for having fewer “layers” of testing to ensure a firm understanding by the public of what it means to be registered and compliant. Consumers need to know which preparer can do what services for them and what the credentials mean.

<sup>1</sup> <http://milwaukeecourieronline.com/index.php/2011/07/23/irs-scam-hits-milwaukee-initiates-national-warning-from-agency/> & [http://www.cleveland.com/consumeraffairs/index.ssf/2011/07/irs\\_state\\_investigate\\_tax\\_prep.html](http://www.cleveland.com/consumeraffairs/index.ssf/2011/07/irs_state_investigate_tax_prep.html)



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**Finally, a fourth issue of concern is transparency around process and cost. Over the last decade, the price of paid tax preparation has steadily increased.** Taxpayers should have the ability to research and compare prices for services. Most of the time, this isn't provided to them until the return is completely prepared. Under this new program, we would suggest some type of disclosure and transparency, which provides a baseline of fees and costs associated with preparing the return. The fees do not have to be universal but something is needed for comparison purposes and to understand the fee structure upon completion. Additionally, there needs to be a central 800 phone number and database for complaints. This is critical not just enforcement but for consumers looking to research preparers and credentials. Similar to researching a housing contractor or auto repair facility using the Better Business Bureau, a taxpayer should be able to research their tax preparer for type of registration, education, accreditations, and performance.

#### **The VITA Framework: A Model for Quality and Transparency**

As the new paid preparer regulation program unfolds, several promising practices of the VITA program may help inform the program.

- **Strong Compliance among Underserved Taxpayer Populations** – VITA programs are committed to reaching out and educating underserved taxpayer populations to ensure increased compliance among low-income and moderate-income taxpayers in the timely and accurate filing of annual tax returns.
- **Significant decrease in administrative burden and costs associated with operating the federal tax return process.** VITA services also result in decreased administrative burden on the IRS as well as significant cost-savings related to the implementation of the annual tax return process. For example, the IRS strongly encourages the electronic submission of annual federal tax returns because electronic filing results in a tremendous savings of \$3.10/return over paper submissions. Unfortunately, only 69% of all taxpayers submit their tax returns electronically, though 92% of returns prepared by VITA sites are electronically completed. **Thus, VITA's primary use of electronic submission saves the IRS approximately \$4 million in administrative costs every year.**
- **Ensuring Accurate Completion of Tax Returns:** Independent evaluations of VITA have consistently reported a higher accuracy rate on average in terms of successfully completed tax returns than any other subcategory of available tax preparations services. In a recent evaluation conducted by the Internal Revenue Service confirmed that during 2011, the accuracy rate for preparing individual 2010 tax returns rose two percentage points from last year to 87%.<sup>2</sup> Accuracy is determined by correctly computing the tax liability.

<sup>2</sup> Internal Revenue Service. Fact Sheet: Increased Accuracy Rate for VITA/TCE. Summer 2011.



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- **Furthering the Best Interests of Taxpayers through Access and Affordability:** VITA programs provide a free, safe alternative to the commercial tax preparation chains as well as to untrained and unlicensed tax preparers who often target low-income filers during tax time. During the 2010 tax year filing season, VITA programs saved taxpayers claiming the Earned Income Tax Credit an estimated average \$80 million in paid preparer fees. This is money that went back into the hands of workers and local economies. VITA sites often serve as a critical portal to assisting low-income taxpayers from underserved communities with other asset development and financial education services in addition to tax preparation.
- **Preservation of High Quality Standards:** In order to maintain consistently high-quality standards across the field, VITA volunteers undergo extensive training and testing annually prior to serving taxpayers. Additionally, NCTC provides technical assistance on innovative strategies and disseminates information on the most promising practices in the tax preparation sector to VITA sites across the country to ensure the highest quality standards are being implemented nationwide.

As the Committee continues to monitor the unfolding of the IRS certification program for paid tax preparation organizations, NCTC and its network of 2,100 members are available to provide additional information and serve as a resource for educating the Committee on real-time experiential data witnessed by VITA sites and the clients they serve.

