



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

August 23, 2010

The Honorable Douglas H. Shulman
Commissioner
CC:PA:LPD:PR (REG-139343-08)
Room 5205
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Comments on REG-139343-08, User Fees Relating To Enrollment and Preparer Identification Numbers

Dear Commissioner Shulman:

The American Institute of Certified Public Accountants is pleased to provide the attached comments on REG-139343-08, User Fees Relating to Enrollment and Preparer Tax Identification Numbers (hereafter the “User Fee Regulations”). We strongly support the Service’s efforts to increase tax compliance and elevate ethical conduct through the adoption of a registration process applicable to the paid tax return preparer community. However, we have serious concerns regarding the level of burden that the proposed regulatory regime will primarily place on small and medium-size CPA firms.

The AICPA is the national professional organization of certified public accountants comprised of approximately 360,000 members. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. They provide services to individuals, not-for-profit organizations, and small and medium-sized businesses, as well as America’s largest businesses.

Our comments also address the entire IRS proposed regulatory regime. We believe the combined burdens and costs of these various regulations – REG-134235-08 (hereafter the “PTIN Regulations”), the User Fee Regulations, and REG-138637-07 (hereafter the “Circular 230 Regulations”) as well as future regulations regarding user fees that remain unpublished at this time – must be examined as a whole, because that is how such regulations will operate in practice to impact preparers, including our member firms.

The AICPA offers the attached comments in response to the User Fee Regulations in the hope that the Service will reexamine some aspects of the proposed regulatory regime in light of the concerns raised by our small CPA firm members.

I. IRS Policy Development and Regulatory Framework

Because the definition of a tax return preparer in the PTIN Regulations is a facts and circumstances analysis that lacks clarity, the proposed regulatory regime will encompass many non-federally authorized tax practitioner (FATP) staff at CPA firms who never sign tax returns. Thus, for many CPA firms, the only practical way to ensure compliance with the new regulations will be to register all non-FATP staff

who contribute to the preparation of tax returns in a way that is not purely administrative or characterized as simple data entry. This lack of clarity surrounding who is a paid tax return preparer for purposes of the PTIN Regulations could potentially encompass every employee in the firm.

The broad definition of paid tax return preparer could also encompass part-time employees and those employees that function as seasonal help but whose responsibilities do not require them to sign returns – two categories of workers that many small and mid-size CPA firms rely upon to accomplish the preparation and filing of tax returns during busy seasons. The proposed regulatory regime would also include non-signing employees of CPA firms who are in the process of becoming licensed CPAs. The individuals may be persons who have completed the education requirements to obtain their CPA designation, but who have not yet satisfied all of the state accountancy board testing and/or experience requirements.

Many CPA firms have robust internship programs where interns are hired during busy season or summer sessions between academic years. The interns are trained for the first several weeks of employment and later in the season assist in preparing tax returns. Given the short-term employment relationship of the intern with the CPA firm, any requirement that the intern take a test or fulfill continuing education (CE) will likely result in many fewer interns being hired. This will deprive many students of a very useful real world supplement to their education.

It is unnecessary to extend the IRS proposed tax return preparer regulatory regime to non-signing, non-FATP employees of CPA firms given the existing state regulatory landscape. The CPA is both responsible for the staff that he or she supervises and is responsible for each return that the CPA signs as the preparer. This is reinforced through regulation by state licensing boards that hold the responsible CPA or registered CPA firm accountable for the action of its staff.

II. Probable Costs of Proposed Preparer Regime – Adverse Effect on Small Businesses

AICPA has approximately 39,000 member firms with five or fewer CPAs, and of these, about 29,000 are sole practitioners (referred to herein as a “small CPA firm”). We assume for cost estimate purposes that each firm has five non-CPA employees performing non-signing work related to preparation of the tax return. These employees may be interns, full-time, part-time or seasonal help. We assume for cost estimate purposes that first-year costs of the proposal as to each employee of the small CPA firm will be approximately \$2,000. For the first year of a regulatory regime that would require PTIN registration, testing and CE for CPA firm staff, we estimate that each firm will incur \$10,000 in new costs based on the adoption of the proposed regulatory regime. Viewing the \$10,000 first-year costs in light of the 39,000 small CPA firms, we estimate first year costs as to the small business sector of our membership to be at least \$390 million – which is the cost of regulating non-CPA firm staff alone, and does not include increased costs to the CPA members of the firm. Most of these costs stem from requiring non-FATP employees to pass a test and continuing education requirements. Economic theory argues that these costs will be passed on to taxpayers and/or absorbed by the CPA firm; either way, the economy suffers.

III. The IRS Should Consider Whether Its Proposal is Narrowly Tailored to Meet IRS Goals and Whether Other Alternatives Were Appropriately Considered

The estimated costs in connection with the IRS's proposed regulatory regime are substantial, and as stated above, potentially rise to the level of hundreds of millions of dollars in new costs imposed on small CPA firm businesses alone. The PTIN Regulations and the User Fee Regulations should be treated as "significant regulatory actions" under Executive Order 12866. Executive Order 12866 requires agencies proposing significant regulatory actions to provide an explanation of the need for the regulatory action and perform an assessment of potential costs and benefits of the regulatory action. Thus, given the significant costs associated with these regulations, we question whether the IRS has adequately explored alternatives that would lessen the burden imposed on small businesses, while still achieving the IRS's goals.

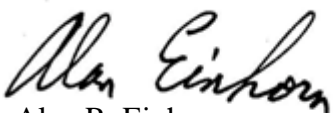
We believe that the regulation of tax return preparers should not paint the CPA firm with the same broad brush as the unenrolled preparer based on the fact that licensed CPA professionals who are responsible for the work of their staff are regulated by state boards of accountancy and must meet CE requirements that generally exceed the levels proposed by IRS.

We urge that the IRS consider the following alternatives:

- All signing tax return preparers should obtain PTINs. The Service should consider a delay in the adoption of the testing and CE aspects of the regime that are proposed in the Circular 230 Regulations until an analysis of the benefits vis-à-vis the additional burdens being placed on the practitioner community can be performed.
- Limit the proposed regulatory regime to signing paid tax return preparers for 2011, as suggested by IRS Publication 4832 (IRS Preparer Review Report), and commit the IRS to study whether it is necessary to include non-signing preparers within the regime for 2012 and later years after further analysis of the associated level of cost and burden in light of the goals sought to be achieved.
- Under a third alternative, the IRS would exempt non-signing employees of CPA firms from registration, testing, and IRS-mandated CE requirements similar to state-adopted tax return preparer regulatory regimes

If you would like to discuss this matter in more depth or have any questions, please contact me at aeinhorn@deloitte.com, or (202) 879-4966; or Edward S. Karl, AICPA Vice President-Taxation, at ekarl@aicpa.org, or (202) 434-9228.

Sincerely,



Alan R. Einhorn

Chair, Tax Executive Committee

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

**COMMENTS ON REG-139343-08, USER FEES RELATING TO ENROLLMENT AND
PREPARER IDENTIFICATION NUMBERS**

SUBMITTED TO THE IRS

August 23, 2010

The American Institute of Certified Public Accountants is pleased to respond to the request for comments on REG-139343-08, User Fees Relating to Enrollment and Preparer Tax Identification Numbers (hereafter the “User Fee Regulations”). As we noted in our comments on REG-134235-08, Furnishing Identifying Number of Tax Return Preparer (hereafter the “PTIN Regulations”), we strongly support the Service’s efforts to increase tax compliance and elevate ethical conduct through the adoption of a registration process applicable to the paid tax return preparer community. However, we have serious concerns regarding the level of burden that the proposed regulatory regime will place primarily on small and medium-size CPA firms. The burden associated with the inclusion of the non-signing employees of such firms within the planned regulatory regime will be immense, in particular as the regime contemplates the imposition of testing and continuing education requirements on these employees per REG-138637-07 (“Circular 230 Regulations”) issued on August 19, 2010. Equally as important as our concerns regarding burden, we also have serious concerns that the IRS proposes to treat non-signing employees of CPA firms similarly to other unenrolled tax return preparers. Based on the existing regulatory regime governing CPA firms, we do not believe this policy position is justifiable or necessary.

The AICPA is the national professional organization of certified public accountants comprised of approximately 360,000 members. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. They provide services to individuals, not-for-profit organizations, and small and medium-sized businesses, as well as America’s largest businesses.

The vast majority of AICPA member firms are small or mid-size CPA firms, and it is with their particular interests in mind that we submit these comments on the proposed regulations. Considering the proposed tax return preparer regulatory regime as a whole, we question whether the Service has adequately examined the costs imposed on the preparer community associated with the proposal, and whether those costs are justified in light of its goals. We also question whether the Service has fully considered less burdensome alternatives that would accomplish its goals without the imposition of undue burden on small businesses.

In addition to the burdens placed on CPA firms, we believe that the adoption of the proposal will contribute to larger economic concerns, such as increased costs for US taxpayers, including small businesses, as CPA firms pass on the increased costs of new regulation in the form of higher tax return preparation costs. For example, many of the clients of small CPA firms are other small businesses or individuals who are owners of small businesses. These are exactly the types of businesses that the Administration seeks to assist with proposed tax cuts. On July 28, 2010, President Obama stated “[s]mall businesses are the backbone of our economy.”

The AICPA offers the following comments in the hope that the Service will reexamine some aspects of the proposed regulatory regime in light of the concerns raised by our CPA firm members that are detailed below. Part I of our comments explains the context of how the regulatory framework will affect CPA firms; Part II describes the costs anticipated as part of the proposed regulations; Part III looks at whether there are less burdensome alternatives that the IRS should consider to achieve its objectives and Part IV includes our general comments.

I. IRS Policy Development and Regulatory Framework

In January 2010, Commissioner Shulman released IRS Publication 4832, Return Preparer Review (“the Report”), which analyzed the present status of the paid tax return preparer community and made various recommendations for increasing IRS oversight of paid tax return preparers. Among the primary recommendations the Report made were that all signing paid tax return preparers should register with the IRS to receive a preparer tax identification number (PTIN); paid tax return preparers who are not federally authorized tax practitioners (FATPs) should be subject to testing; paid tax return preparers who are not FATPs should be subject to continuing education (CE) requirements; and Circular 230’s ethics rules should apply to all paid tax return preparers.

National Taxpayer Advocate Nina Olson (NTA) identified the lack of regulation of tax return preparers in January 2010 as a most serious problem. The NTA had identified the need for preparer regulation in prior annual reports. The most recent NTA report primarily focused on the “unenrolled” paid tax return preparers and lack of consistent standards applied to various members of that group. In that report, the NTA stated that she believed practitioners who are attorneys or CPAs should be exempt from testing and CE. Citing a provision of the Administrative Procedure Act (APA)¹, the NTA stated that “absent a statutory change, the IRS

¹ The provision cited, 5 U.S.C. §§ 500(b) and (c), provides that attorneys may represent clients before federal agencies (and CPAs may represent clients before the IRS) upon the submission of a written declaration stating qualifications. The provision has been interpreted by the courts to signify that agencies cannot impose additional requirements on these professionals that inhibit the right to practice. See Polydoroff v. ICC, 773 F.2d 372, 374 (DC Cir. 1985) (agencies continue to have the authority to

cannot require these practitioners to pass a test or complete continuing education before they are able to prepare returns.”²

On March 26, 2010, the IRS issued a Notice of Proposed Rulemaking with respect to the PTIN Regulations. The PTIN Regulations require that each paid tax return preparer obtain and use a PTIN as the exclusive preparer identifying number when he or she signs a tax return. On July 21, 2010, the IRS issued a Notice of Proposed Rulemaking with respect to the User Fee Regulations, which establish a \$50 user fee for obtaining or renewing a PTIN. The Proposed User Fee Regulations anticipate an additional vendor user fee as well.

On August 19, 2010, the IRS issued the Circular 230 Regulations. The Circular 230 Regulations seek to implement the proposed regulatory regime’s requirements of testing and CE. The Circular 230 Regulations refer to additional user fee regulations that remain unpublished at this time. This submission will not provide our comments on the Circular 230 Regulations, which are due in October, 2010.

Tax Return Preparer Regulations Must be Examined in the Context of Entire Regime

Our comments address the entire tax return preparer regulatory regime. We believe the combined burdens and costs of these various regulations – the PTIN, User Fee and Circular 230 Regulations as well as future regulations regarding user fees that remain unpublished at this time – must be examined as a whole, because that is how such regulations will operate in practice to impact preparers, including our member firms.

Although we have reviewed the proposed User Fee Regulations with respect to PTIN costs, the regulations regarding other user fees associated with the Circular 230 Regulations remain unpublished at this time. Thus, the most significant costs associated with the preparer regulation initiative are unknown, which has made calculating burden with precision difficult. However, we note that the preambles of the PTIN, User Fee and Circular 230 Regulations explain that future planned guidance may have a significant cost impact on small businesses. We hope that as the IRS proceeds with publication of the additional guidance, the Service considers the total costs imposed by the proposed regulatory regime in relation to the governmental objectives sought to be achieved.

discipline members of the bar practicing before it, as 5 USC § 500 “merely prohibits agencies from erecting their own supplemental admission requirements for duly admitted members”)

² National Taxpayer Advocate December 31, 2009 Annual Report to Congress, Volume 1, page 48, n. 29.

The Definition of “Tax Return Preparer” Should Not Include Non-Signing Employees of CPA Firms

Definition of Paid Tax Return Preparer Includes Most Non-Signing Employees

Our comments also reflect our understanding that the definition of “paid tax return preparer” for purposes of the PTIN Regulations differs from the definition of tax return preparer under Internal Revenue Code section 7701 and the regulations thereunder. The definition of “paid tax return preparer” under the PTIN regulations could encompass most non-FATP, non-signing staff working at CPA firms.

The PTIN Regulations define a tax return preparer as “any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax.” The definition describes numerous factors to consider in determining whether an individual is a tax return preparer, including: the complexity of the work performed by the individual relative to the overall complexity of the tax return; the amount of items of income, deductions or losses attributable to the individual relative to the total amount of income, deductions or losses required to be reported; and the amount of tax or credit attributable to the work performed by the individual relative to the total tax liability required to be reported. By its terms, this definition includes signing preparers – persons with primary responsibility for the overall substantive accuracy of the preparation of a tax return – and non-signing preparers who contribute to the preparation of all or substantially all of the return in a way that is not purely administrative. The Circular 230 Regulations propose mandatory testing and mandatory CE for individuals who are registered tax return preparers, and are coextensive with the PTIN Regulations’ definition of who is a paid tax return preparer.

Because the definition of a tax return preparer in the PTIN Regulations is a facts and circumstances analysis that lacks clarity, the proposed regulatory regime will encompass many non-FATP staff at CPA firms who never sign tax returns. Thus, for many CPA firms, the only practical way to ensure compliance with the new regulations will be to register all non-FATP staff who contribute to the preparation of tax returns in a way that is not purely administrative or characterized as simple data entry.³ For a smaller firm, this lack of clarity surrounding who is a paid tax return preparer for purposes of the PTIN Regulations could potentially encompass every employee in the firm. In a small firm, employees with mostly administrative functions sometimes perform duties that could fall under the definition of paid tax return preparer in the PTIN Regulations based on the examples in the regulations. For example, an administrative

³ Proposed Treas. Reg. § 1.6109-2(g), Example 3 could encompass, within the definition of a paid tax return preparer, any person who prepares a draft return with preliminary determinations that will become final only after the substantive review and agreement of the reviewing CPA. See also Treas. Reg. § 301.7701-15(f)(1)(viii).

assistant in a small CPA firm discusses a tax organizer with a client who is a married couple filing a joint return. While discussing the questions included in the organizer, the administrative assistant learns that the couple's teenage son had a summer job and must file a Form 1040EZ declaring income and bank interest. The administrative assistant prepares the entire draft Form 1040EZ and provides it to the CPA who will review the return for accuracy and sign as the signing tax return preparer. In this case, the breadth of the definition of a paid tax return preparer in the PTIN regulations appears to encompass the administrative assistant, even though the administrative assistant is acting in what the CPA and the assistant believe is an administrative capacity and the administrative assistant is directly supervised by a licensed CPA, his or her work is reviewed by the licensed CPA, and the licensed CPA is considered the person who has the primary responsibility for the overall substantive accuracy of the preparation of the return as indicated by the CPA's signature on the return.

The broad definition of paid tax return preparer could also encompass part-time employees and those employees that function as seasonal help but whose responsibilities do not require them to sign returns – two categories of workers that many small and mid-size CPA firms rely upon to accomplish the preparation and filing of tax returns during busy seasons. In light of the fact that the IRS hires thousands of persons each year as seasonal workers, the IRS should consider the impact of its proposed regulatory regime on the private sector where similar seasonal employment practices are adopted in order to accomplish timely and accurate return filing during busy season.

The proposed regulatory regime would also include many non-signing employees of CPA firms who are in the process of becoming licensed CPAs. The individuals may be persons who have completed the education requirements to obtain their CPA designation, but who have not yet satisfied all of the state accountancy board testing and/or experience requirements. This is significant, especially when nearly all states now require 150 semester hours of college-level education to be earned as part of the requirements to become a CPA, which is the equivalent of a masters-level of education.

Many CPA firms have robust internship programs where interns are hired during busy season or summer sessions between academic years. The interns are trained for the first several weeks of employment and later in the season assist in preparing tax returns. In many cases, the intern will prepare a draft of the entire return and make preliminary determinations of tax liability that are reviewed carefully by a licensed CPA who is the signing preparer of the return. In the case where the intern prepares a draft of the entire return, the work of the intern would also come within the definition of a paid tax return preparer for purposes of the PTIN regulations, even with extensive supervision and practical instruction by the supervising CPA. Given the short-term employment relationship of the intern with the CPA firm, any requirement that the intern take a test or fulfill CE will likely result in many fewer interns being hired. The timeframes for taking

the IRS examination and fulfilling the CE requirement prior to commencing an internship will be regarded as impractical when viewing the term of the internship, which also will contribute to fewer interns being hired. This will deprive many students of a very useful real world supplement to their education.

Also, CPA firms may have non-FATP professionals engaged in specialty practices who could be considered paid tax return preparers under the PTIN Regulations. Examples include an economist with a Ph.D. who practices in the area of transfer pricing, an M.B.A.-holder who works in municipal bond financing, or a paraprofessional working on estate tax returns. Proposed Treas. Reg. § 1.6109-2(g), Example 4 discusses an example involving a specialist advising with respect to a tax credit where the conclusion is that the specialist is not a paid tax return preparer who would be required to obtain a PTIN. While the example is helpful with respect to viewing the role of non-signing specialists, there are at least two problems with the example. First, the conclusion of the example appears internally inconsistent. The example states that the amount of the credit would not change the result and that the specialist has not prepared all or substantially all of the return. However the regulatory test states that factors indicating whether there has been preparation of all or substantially all of a return include the amount of tax or credit attributable to the work performed by the individual relative to the total tax liability required to be reported. Second, the example does not contemplate individuals who are in a specialty practice area and who are signers of tax forms related to their specialty (e.g., international forms, payroll forms, etc.). Unless the IRS excludes information returns from the proposed regulatory regime, and limits the proposed regulatory regime to tax returns in the Form series 1040, for example, by only requiring paid tax return preparers of tax returns in the Form series 1040 to register, be tested, comply with CE, etc., then any specialists who are signing preparers of specialty tax forms would be required to test on Form series 1040 – a complete waste of resources as these individuals are not practicing in the individual income taxation area. Requiring these individuals to register or take a test that focuses on individual income taxation, or even small business corporate income taxation, would do nothing to address IRS concerns regarding base-level competency because the IRS tests would have no nexus with their respective practice areas.⁴

Existing State Regulation of CPAs and CPA Firms is Sufficient

It is also unnecessary to extend the IRS proposed tax return preparer regulatory regime to non-signing, non-FATP employees of CPA firms given the existing state regulatory landscape. As noted in Part II, most of the cost burden in the proposed regulatory regime to small CPA firms is

⁴ The Circular 230 Regulations appear to acknowledge that there is a problem with the lack of nexus in this situation and request comments on whether a tax return preparer who solely prepares tax returns other than Form 1040 series returns (for example, Form 941, Employer's QUARTERLY Federal Tax Return, or Form 706, U.S. Estate Tax Return) should be permitted to prepare these other tax returns without successfully completing any examination.

due to the inclusion of non-FATP, non-signing staff within the scope of the regulatory regime. The CPA is both responsible for the staff that he or she supervises and is responsible for each return that the CPA signs as the preparer. This is reinforced through regulation by state licensing boards that hold the responsible CPA or registered CPA firm accountable for the action of its staff. This indirect regulation of non-FATP staff working for a CPA also encompasses training and competency – generally, the CPA determines the training needs of his or her employees commensurate with the level of responsibility given to those employees as part of the employment relationship. This level of indirect regulation has been working effectively, and there is no indication that the problems that have led to the IRS development of its proposed return preparer regulatory initiative are similarly prevalent among CPA firms.

In light of the existing state regulatory landscape, all four states – New York, California, Maryland and Oregon – that have preceded the IRS by adopting preparer regulation regimes at the state level have adopted an exemption for non-signing employees of CPAs.⁵ We do not understand how the IRS developed this expansive regulatory policy position where the states have not recognized similar urgencies regarding this population of CPA firm employees.

The IRS proposed regulatory policy position should also be reexamined in light of the policy expressed in the APA. As discussed above, the APA prohibits the adoption of additional admission requirements that inhibit a licensed CPA's right to practice before the IRS. It is not clear why the IRS would seek to impose additional requirements on employees who support the CPA's practice before the IRS. The imposition of burdens directly on the employees of the CPA at the same time indirectly places those burdens on the CPA employer, as the CPA is responsible for the training and supervision of his or her non-signing personnel, not to mention bearing the costs to comply with the employees' compliance.

If testing and CE requirements are adopted for non-FATP, non-signing employees of CPA firms, then the regulation takes the position that CPA firms must institute mandatory training for the staff at levels set by the IRS, regardless of the level of responsibility associated with particular employees (e.g., interns, first year employees, or long term employees with greater levels of responsibility), all of whom are supervised by the CPA. This is not a necessary step to ensure the competency of staff at a CPA firm. We are unaware of a finding that would suggest the state boards of accountancy's indirect regulation of CPA firm non-FATP employees is inadequate, or that CPA firm non-FATP, non-signing employees are inadequately trained for their job responsibilities.

In addition, we are not aware of any systemic issue where the IRS has had difficulty locating the non-signing preparer of a tax return by simply making an inquiry to the CPA who acted as the

⁵ N.Y. TAX. LAW § 32(a)(14); Cal Bus. & Prof Code § 22258; Md. Business Occupations and Professions Code Ann. § 21-102; ORS § 673.610.

signing preparer. CPAs and CPA firms are businesses that operate year round, filing returns on extension, filing business returns, calculating estimated tax payments, and performing other business and tax planning, and thus would be available to respond to IRS inquiries should they be made. This should be distinguished from other tax return preparation businesses, a majority of which are only open during the individual income tax filing season.

Furthermore, the contribution of CPAs to improving tax administration through government liaison activities has been recognized by both federal and state tax administrators. In an interview with the Journal of Accountancy, April 2010, Commissioner Shulman said, “I view CPAs as an incredibly important part of the tax system, helping us with both service to the American people and with compliance.” In light of the partnership between CPAs and government to improving tax administration, our members do not understand why the IRS proposes to include CPA firm’s non-FATP, non-signing staff within the proposed regulatory regime and how this proposal seeks to improve overall tax compliance.

II. Probable Costs of Proposed Preparer Regime – Adverse Effect on Small Businesses

The IRS has not publicly released an estimate of costs associated with the proposed regulatory regime. A true estimate may be difficult for the IRS to ascertain, as it has acknowledged in past publications that it has been difficult to get an accurate estimate of the number of paid tax return preparers in the country.⁶ However, we feel strongly that the IRS must carefully weigh the impact of the costs of its proposals on the affected businesses against the objectives sought to be achieved. We offer the following analysis of the costs associated with the proposed regulatory regime with respect to small CPA firms as an example of the regulatory regime’s effect on just one segment of the paid tax return preparer community.

Types of Costs Imposed Under Proposed Regulatory Regime

Based on the proposals described in the January Report and the future guidance described in the PTIN and User Fee Regulations, we list the types of costs imposed under the proposed regulatory regime in the table below.

No.	Costs (some estimated)	Source of Cost or Comment
1	IRS user fee for PTIN - \$50 per year as proposed	<ul style="list-style-type: none"> • User Fee Regulations.
2	Vendor user fee for PTIN - \$14.25 per year	<ul style="list-style-type: none"> • IR-2010-91.

⁶ According to IRS Pub. 4832, Return Preparer Review, “[t]he precise number of tax return preparers is not known, but the IRS estimates that there are between 900,000 and 1.2 million individuals preparing tax returns for a fee.” See page 1 of the Report.

3	IRS user fee for examination	<ul style="list-style-type: none"> • Further guidance to be issued in additional user fee regulations. • Only known parallel for IRS examination is the Enrolled Agent examination: these include examination fees (currently \$97/part; 3 parts) and application fee (currently \$125, including background investigation; IRS Form 23); the renewal fee is \$125 (3 year rolling enrollment period; IRS Form 8554).
4	Vendor user fee for examination	<ul style="list-style-type: none"> • Further guidance to be issued in additional user fee regulations.
5	IRS user fee associated with reporting or approving CE	<ul style="list-style-type: none"> • Further guidance to be issued in additional user fee regulations. • Unclear whether direct cost on reporting individual, or indirect cost levied on CE provider which will be passed on to CE course attendees, or both.
6	Vendor fee for reporting or approving CE	<ul style="list-style-type: none"> • Further guidance to be issued in additional user fee regulations.
7	Paid employee time studying for exam	<ul style="list-style-type: none"> • Lost billable revenue for time dedicated to employee studying for exam. • Compensation for employee while studying for exam, the amount of which may depend on whether subjects tested are relevant to the employee's practice and job responsibilities.
8	CE course attendance fees	<ul style="list-style-type: none"> • Depends on CE attended, as most CE providers charge registration fees in the hundreds of dollars.
9	Paid employee time attending CE courses	<ul style="list-style-type: none"> • Lost billable revenue for time dedicated to employee attendance at CE courses. • Compensation for employee while attending CE.
10	Travel and accommodation costs at exam site or CE site	<ul style="list-style-type: none"> • Depends on location of small business. • Rural small businesses affected more severely unless web-based or telephonic examination or CE self-study is permitted.
11	Firm management time spent tracking compliance	<ul style="list-style-type: none"> • New personnel necessary, or redirecting current personnel to tracking firm employees' compliance with new regulatory regime.

The costs above must be viewed in light of the fact that CPA firms already expend significant resources to provide training to their employees, and those existing costs will not be supplanted by the new costs associated with the proposed regulatory regime. CPA firms still must train employees to perform their specific duties, which in many cases will be completely unrelated to the IRS test or CE requirement. Indeed, we identify very little of these new costs as overlapping with a typical firm's existing level of expenses dedicated to staff training. There may be a small amount of overlapping costs where the firm employs professionals who are not yet CPAs, but the firm invests in those professionals by paying for the professionals to obtain continuing

professional education.⁷ CPA firms offer thousands of courses to their partners and staff, providing millions of hours of quality continuing professional education. In addition, it is not clear whether the costs of other aspects of the program, for example, planned compliance or suitability checks, will be funded out of currently identified fees or whether the Service will promulgate future guidance to subject practitioners to additional fees.

In large CPA firms, the breadth of the definition of tax return preparer has immense cost implications, as the number of staff who are not licensed CPAs tends to follow the scale of the firm's CPA members given a leveraged employment model. Larger firm employees are usually required to obtain a CPA license in order to be promoted to an intermediate level at the firm, so it is likely that the costs will mostly affect first and second year hires, as well as interns, who are in the process of obtaining their credentials.

Small Business Impact Cost Estimates

To get a clearer picture of the costs of the proposed tax return preparer regulatory regime, especially as applied to small CPA firms, we must look at the proposed regulatory regime as a whole, which could encompass virtually the entire staff of a small CPA firm engaged in tax return preparation.

AICPA has approximately 39,000 member firms with five or fewer CPAs, and of these, about 29,000 are sole practitioners (referred to herein as a "small CPA firm"). We assume for cost estimate purposes that each firm has five non-CPA employees performing non-signing work related to preparation of the tax return. These employees may be interns, full-time, part-time or seasonal help. We assume for cost estimate purposes that first-year costs of the proposal as to each employee of the small CPA firm will be approximately \$2,000. For the first year of a regulatory regime that would require PTIN registration, testing and CE for CPA firm staff, we estimate that each firm will incur \$10,000 in new costs based on the adoption of the proposed regulatory regime. Viewing the \$10,000 first-year costs in light of the 39,000 small CPA firms, we estimate first year costs as to the small business sector of our membership to be at least \$390 million – which is the cost of regulating non-CPA firm staff alone, and does not include increased costs to the CPA members of the firm. Most of these costs stem from requiring non-FATP employees to pass a test and continuing education requirements. Economic theory argues that these costs will be passed on to taxpayers and/or absorbed by the CPA firm; either way, the economy suffers.

⁷ The overlap between current training expenses and the proposed regulatory regime costs would be greater in larger CPA firms that are registered with the PCAOB to provide attest services to SEC registrants, as these firms generally require their client-facing professionals to meet continuing professional education requirements in excess of what has been proposed by the IRS.

In addition to the direct costs of the proposed regulatory regime, the regulatory regime will have various other economic impacts. With the higher costs of employing non-FATP staff, small CPA firms may hire fewer employees who will be required to register, be tested, and attend CE. In order to avoid greater regulatory costs, small CPA firms will concentrate work assisting in the preparation of returns in the hands of fewer employees. Internship programs, which already are not cost effective but are largely undertaken to train, support and encourage new entrants into the profession, could be terminated or reduced in size if onerous and unnecessary regulatory costs are imposed.

III. The IRS Should Consider Whether Its Proposal is Narrowly Tailored to Meet IRS Goals and Whether Other Alternatives Were Appropriately Considered

The estimated costs in connection with the IRS's proposed regulatory regime are substantial, and as demonstrated above, potentially rise to the level of hundreds of millions of dollars in new costs imposed on small CPA firm businesses alone. The PTIN Regulations and the User Fee Regulations should be treated as "significant regulatory actions" under Executive Order 12866. Executive Order 12866 requires agencies proposing significant regulatory actions to provide an explanation of the need for the regulatory action and perform an assessment of potential costs and benefits of the regulatory action. For economically significant regulatory actions, that is, those actions that will likely result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy or a section of the economy, including jobs, the agency also is required to provide a more detailed assessment of the likely benefits and costs of the regulatory action, including a quantification of those effects as well as a similar analysis of potentially effective and reasonably feasible alternatives.

The PTIN Regulations and the User Fee Regulations involve economically significant regulatory actions. Thus, given the significant costs associated with these regulations, we question whether the IRS has adequately explored alternatives that would lessen the burden imposed on small businesses, while still achieving the IRS's goals. The IRS has identified the overall goals of improving the compliance levels and ethical standing of the tax return preparation industry. In the User Fee Regulations, the IRS stated its specific goals as (1) allowing the IRS to track the number of persons who prepare returns; (2) tracking the qualifications of those persons who prepare returns; (3) tracking the number of returns each person prepares; and (4) locating and reviewing returns prepared by a specific tax return preparer when instances of misconduct are detected. Each of Service's four specific goals may be achieved by adopting the proposed regulatory regime as to signing tax return preparers. Two of the specific goals (goals 3 and 4) will not be achieved as to non-signing tax return preparers.

Given the highly regulated state of the CPA profession, we urge the IRS to consider alternatives that would lessen the burden on CPA firms, particularly small CPA firms that will be most

affected by the costs of the proposed regulatory regime. In the PTIN Regulations, the IRS states that it considered these alternatives, among others:

- (1) requiring all paid tax return preparers to comply with the ethical standards in Circular 230 or a similar ethics code, but not requiring any paid preparers to demonstrate their qualification and competency;
- (2) requiring all tax return preparers who are not currently authorized to practice before the IRS to register with the IRS, complete annual continuing education requirements, and meet certain ethical standards, but not to pass a minimum competency examination;
- (3) requiring all paid tax return preparers to pass a minimum competency examination and meet other registration requirements; and
- (4) requiring all paid tax return preparers who are not currently authorized to practice before the IRS to pass a minimum competency examination and meet other registration requirements, but grandfather in tax return preparers who have accurately and competently prepared tax returns for a certain period of years.

Based on this list, it appears that the alternatives considered were combinations of varying levels of regulation placed upon a paid tax return preparer. The IRS has not addressed why different or less burdensome alternatives would not be sufficient to satisfy the IRS's goals for its proposed regulatory regime.

The proposed regulatory regime and the alternatives described above represent a "one size fits all" model for addressing IRS concerns regarding levels of competency and integrity associated with a subset of the paid tax return preparer community. We believe that the regulation of tax return preparers should not paint the CPA firm with the same broad brush as the unenrolled preparer based on the fact that licensed CPA professionals who are responsible for the work of their staff are regulated by state boards of accountancy and must meet CE requirements that generally exceed the levels proposed by IRS. We would emphasize again that there is no evidence of a systemic quality issue for preparers in CPA firms. Conversely, in the Report, the IRS determined there is a systemic quality issue among unenrolled tax return preparers employed by other non-CPA firms, basing its findings on the governmental studies discussed therein.

We urge that the IRS consider the following alternatives:

- One alternative that AICPA recommended in our comments in response to the PTIN Regulations would require all *signing* tax return preparers to obtain PTINs (such that the IRS would be able to meet its specific goals of identifying paid tax return preparers and accomplishing tracking of preparers through IRS enforcement and compliance initiatives) and subject all tax return preparers to the ethics rules in Circular 230. With this combination of requirements, the IRS would be able to meet its overall goals and have

the ability to further analyze the burdens associated with the testing and CE components of the regime prior to their adoption. The Service should consider a delay in the adoption of the testing and CE aspects of the regime that are proposed in the Circular 230 Regulations until an analysis of the benefits vis-à-vis the additional burdens being placed on the practitioner community can be performed.

- Another alternative would be to limit the proposed regulatory regime to signing paid tax return preparers for 2011, as suggested by the Report, and commit the IRS to study whether it is necessary to include non-signing preparers within the regime for 2012 and later years after further analysis of the associated level of cost and burden in light of the goals sought to be achieved.
- Under a third alternative, the IRS would exempt non-signing employees of CPA firms from registration, testing, and IRS-mandated CE requirements similar to state-adopted tax return preparer regulatory regimes, see e.g., ORS § 673.610, exempting a licensed CPA or registered public accounting firm and their employees from Oregon’s return preparer regulations. This is a reasonable alternative when taking into account the policy adopted in 5 USC § 500(b) and (c) favoring state-licensed professionals ability to practice before federal agencies without additional burdens placed on those professionals, and balancing the costs imposed by the proposal with the goals sought to be achieved.

IV. Other Comments

Appropriate Title for Persons Receiving a PTIN

The PTIN, User Fee and Circular 230 Regulation refer to CPAs, attorneys, enrolled agents, and “registered tax return preparers” as the types of individuals who will be required to register for a PTIN if such individuals will be preparing tax returns for compensation. We believe the title “registered tax return preparer,” which generally refers to formerly unenrolled preparers, may prove misleading to the public.

The title “registered tax return preparer” may cause confusion among taxpayers in the marketplace as the term may imply a higher level of professional capability and education when viewed in light of other comparable “registered” professionals. Under the PTIN Regulations, a “registered tax return preparer” would not be required to have a high school diploma, let alone a college degree or any academic grounding in the field of taxation.

The AICPA strongly recommends that the IRS refer to these formerly unenrolled preparers as “authorized tax return preparers.” We believe the title “authorized tax return preparer” is both a more accurate description of their relationship vis-à-vis the IRS and is less likely to mislead taxpayers with regard to their level of competence. The title of “authorized tax return preparer” would work well with any public awareness campaign that the Service might develop to advise

taxpayers about choosing a paid income tax return preparer, and is consistent with the current “Authorized IRS *e-file* Provider” database which has been in place for a number of years.

Conclusion

As noted above, we strongly support the Service’s efforts to increase tax compliance and elevate ethical conduct through the adoption of a registration process applicable to the paid tax return preparer community. However, the AICPA firmly believes CPA firms are unique in their regulated status, and the IRS should consider these attributes in forming its regulatory policy. Accordingly, we do not believe in a “one size fits all” approach and urge that the IRS exempt the non-signing staff of CPA firms from the requirements of its proposed registration regime.