



October 7, 2011

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

CC:PA:LPD:PR (REG-116284-11)

Re: User Fees Relating to the Registered Tax Return Preparer Competency Examination and Fingerprinting Participants in the Preparer Tax Identification Number, Acceptance Agent and Authorized E-File Provider Programs

Dear Commissioner Shulman:

The American Institute of Certified Public Accountants (AICPA) is pleased to provide comments on the proposed regulations regarding User Fees Relating to the Registered Tax Return Preparer Competency Examination and Fingerprinting Participants in the Preparer Tax Identification Number, Acceptance Agent and Authorized E-File Provider Programs (User Fee Regulations). The AICPA strongly supports 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 User Fee Regulations will place on CPA firms, primarily small and medium-size CPA firms. Specifically, we are most concerned with three aspects of the proposed regulations:

- The fingerprinting of supervised non-signing, non-licensed staff at CPA firms and other firms of licensed professionals who are exempt from the testing and continuing education aspects of the IRS Return Preparer regulatory regime (Supervised Employees).
- The possibility that IRS might cease issuing provisional Preparer Tax Identification Numbers (PTINs) as soon as April 19, 2012.
- IRS's request for comments on whether CPAs should be fingerprinted as part of the suitability check performed attendant to receiving a PTIN.

Fingerprinting of Supervised Employees and Associated Costs

The IRS proposes to collect fingerprints from individuals who apply for a PTIN in order to perform the suitability check required by section 10.5(d) of Circular 230 as it applies to Registered Tax Return Preparers (RTRPs) and Notice 2011-6 as it applies to Supervised

Employees. Although the proposed regulations under Circular 230 and Notice 2011-6 did signal the IRS' intent to require "suitability checks," the guidance did not mention fingerprinting nor describe it as the exclusive means by which such checks would be performed. We understand that the IRS intends to use private parties under contract with the IRS (IRS Vendors) to electronically collect the PTIN applicant's fingerprints so that the fingerprints may be transmitted to the Federal Bureau of Investigation (FBI) in order for the FBI to conduct a criminal background check. A PTIN applicant will be required to be physically present at a location supported by the IRS Vendors in order to be fingerprinted.

We believe the IRS proposal to collect fingerprints at cost to PTIN applicants is a major departure from the "compliance checks," generally mentioned in tandem with "suitability checks," but currently done at no cost to the tax preparer community. Although the IRS signaled that it intended that fingerprinting would play a role in the suitability process, information regarding the specifics of the process, and the associated costs, is still lacking. We believe that valuable stakeholder discussions and feedback regarding the proposal's impact could be more easily provided if the IRS extended the comment period beyond the 30 days provided for in the User Fee Regulations. We also urge the IRS to further explore less costly alternatives prior to adopting the User Fee Regulations as final regulations.

As a threshold matter, we believe it is unnecessary to extend this proposal to the population of Supervised Employees. These individuals may not sign a tax return as a paid preparer under the terms of Notice 2011-6, and they must be supervised by a licensed professional, e.g., a CPA. CPA firms, as employers, have a strong interest in assuring that their employees are fit to provide services as Supervised Employees from the perspective that CPAs rely on their employees' work and take responsibility for it from a state licensing perspective and regulatory perspective, including applicability of preparer penalties. We do not believe that the IRS should interpose itself in the employer/employee professional relationship by insisting on burdensome fingerprinting performed by an outside vendor and then forwarded to the FBI.

We presume that the government's interest in conducting background checks of PTIN applicants relates to the IRS goal to validate the PTIN applicant's response to the PTIN application's question whether the applicant has had any felony convictions during the last 10 years. While we do not oppose IRS efforts to ascertain suitability as a general matter, we believe that mandating fingerprinting as the exclusive means by which background checks are conducted is overreaching and unnecessary to achieve the agency's goals. Many private sector employers, including CPA firms, already conduct background checks attendant to the employment relationship, including checking the applicant against existing databases of federal or state criminal activities. This process is often performed by a private consumer reporting agency and is done without the need for the individual to physically visit a particular location for fingerprinting. To the extent a licensed professional's firm, such as a CPA firm, performs background checks attendant to the employment relationship, we believe the IRS proposal is unnecessarily duplicative of efforts that are already undertaken in the private sector. As an alternative to fingerprinting, we believe that the IRS should consider adoption of an alternative framework that would allow CPA firms to engage a Consumer Reporting Agency (CRA) that is regulated by the Federal Trade Commission under 15 U.S.C. 1681 et seq., to perform

background checks to learn of any felony histories of their Supervised Employees. We believe such an alternative could be crafted to meaningfully meet the IRS suitability check requirement through means other than fingerprinting, and in a less costly and less burdensome way to all parties impacted.

We are also concerned about the proposal's costs, including the associated IRS user fee and separate vendor fee, and we believe these costs constitute an additional significant burden that will negatively impact the profession. In addition to the annual cost of the PTIN (currently \$64.25), we understand the IRS user fee for fingerprinting is \$33 plus an additional amount to be charged by the IRS Vendor. Although the fees to be charged by the outside vendor have not been announced at this time, we understand that the total fee, including the portion that is the IRS user fee, is estimated to be approximately \$60 - 90 per applicant.

AICPA research into private sector background check alternatives revealed costs per applicant that are substantially less than the combined IRS and vendor cost. We understand that these private sector alternatives are used by a host of private and public parties, including federal court systems, to conduct background checks. We believe that the consideration of less costly alternatives that are widely available should have been an important aspect of the required cost/benefit analysis underlying regulations, and we note the apparent absence of this element in the burden assessment described in the User Fee Regulations.

The costs of this proposal will not be limited to the IRS user fee and the third party IRS Vendor fee, as there will be the costs of lost time of the employees who must physically present themselves at the IRS Vendor location in order to be fingerprinted, as well as transportation costs associated with the related travel. The requirement to present oneself physically at a limited number of locations supported by the IRS Vendors may be impractical and expensive. For persons who are located in rural areas, this may involve significant paid employee time to travel to the nearest locations. In particular, we are concerned about the impact of these costs on smaller CPA firms.

Cessation of Provisional PTINs

In Notice 2011-80, the IRS states its intention to continue issuing provisional PTINs at least through April 18, 2012. However, once provisional PTINs are discontinued, we understand that this means that affected Supervised Employees who are PTIN applicants would be required to first apply for the PTIN online. The PTIN would not be issued at that time, but instead the person will be instructed to complete the second stage of the application process, which involves submitting fingerprints for the background check process. PTIN applicants will be directed to physically visit one of the locations supported by the IRS Vendors, present their photo identification and then the IRS Vendor will collect the fingerprints. The FBI will perform the background check based on the collected fingerprints, and the results will be sent to IRS officials for review. If there are no "matches" for criminal histories, the PTIN will be issued. If a criminal history is indicated by the background check, IRS officials within the Return Preparer Office will review the case file to adjudicate whether a PTIN should be denied on the basis that the applicant failed the suitability requirement.

We are concerned that the IRS proposal to cease issuing provisional PTINs will cause a significant hardship because the proposal is not flexible enough to accommodate business needs. The discontinuance of provisional PTINs will result in the need to have Supervised Employees “on the bench” and unable to prepare returns under CPA supervision for the period of time associated with the processing of the PTIN application and meeting related requirements. The notion that new hires, new temporary staff, interns, etc. are not supposed to be performing certain services during the pendency of the PTIN application process will negatively impact a CPA firm’s ability to do business. Any “on the bench” timeframe is unacceptable and does not account for those unfortunate situations where there is some processing problem for the PTIN applicant that is largely out of their control (i.e., Social Security Administration data used for the match is wrong, the person is new to the profession (such as an intern), or does not have a tax filing history yet with IRS so they must paper file, etc.) that will unduly delay the applicant’s ability to obtain a PTIN and result in the inability to perform the services necessary to be employed in the industry.

CPA firms need a solution that flexibly addresses their immediate staffing needs without disruption. Any proposal by IRS should address the issues of temporary staff during busy seasons, as well as college interns who work for a short period of time under the direct supervision of licensed professionals. The IRS should also consider maintaining the provisional PTIN and limit the provisional status to a more realistic timeframe, i.e., immediate issuance of the PTIN with three months to complete all other required actions. In addition, we are requesting that if the IRS decides that provisional PTINs should no longer be issued, that the implementation of this decision should occur no earlier than October 16, 2012. Many taxpayers’ returns are extended through October to allow for third party information to be received. Removing provisional PTINs before the extended tax return filing deadline will result in inefficient tax return preparation and increased costs to both tax return preparation firms and the taxpayer.

Exemption of CPAs from Fingerprinting

The preamble to the proposed regulations indicates that the IRS does not intend to fingerprint CPAs (and others) at this time, but specifically requests comments on whether these individuals should be exempt. The AICPA strongly believes that CPAs should continue to be exempt from the fingerprinting process because it is redundant to the suitability process performed by the 55 state boards of accountancy that regulate CPAs in the United States and territories. The purpose of state boards of accountancy is to protect the public by ensuring the competence and ethical standards of CPA practitioners. Each state board of accountancy makes an independent determination with respect to determining suitability of licensees in each respective jurisdiction, and these efforts span the time frame from the initial application process, the licensing process and the licensing renewal process.

In addition, the National Association of State Boards of Accountancy (NASBA) has served as an association dedicated to enhancing the effectiveness of the country’s 55 state boards of accountancy for more than 100 years. NASBA, accomplishes its mission by creating a forum for

accounting regulators and practitioners to address issues relevant to the viability of the accounting profession. NASBA's values are to:

- Preserve the public trust and confidence in CPA license and credential.
- Support the licensing of individuals who demonstrate and maintain competence through education, examination and experience requirements.
- Ensure that integrity, objectivity and independence of licenses are not compromised.
- Foster compliance with ethical and all professional standards.
- Promote the rights of boards of accountancy to regulate licensees in all their professional activities.

In general, CPA firms are required to register with their state boards of accountancy which regulate the firms and the CPAs individually, and subject the firms and their employees to the states' ethical and competency rules. This provides sufficient protection for the public from unscrupulous or incompetent CPAs or CPA firms. This is an important distinction from tax return preparer businesses not subject to this level of regulation and scrutiny.

Criminal convictions may result in the suspension or revocation of an active CPA license, or the refusal of a state board of accountancy to issue a license to a new applicant. The provisions of the codes of many state CPA societies are identical with, or similar to, the provisions of the AICPA Code of Professional Conduct. Because of this identity and similarity, and because it is not uncommon for a CPA to be a member of both the AICPA and one or more state societies, the AICPA and virtually all of the state societies have joined together to create the Joint Ethics Enforcement Program (JEEP). The purpose of the JEEP agreement between the AICPA and a state society is to permit joint enforcement of their respective codes of professional conduct with respect to a member of either or both by means of a single investigation and, if warranted, a single settlement agreement or joint trial board hearing. There is also a stated process for cooperation with state boards of accountancy.

Finally, we would like to point out our nation's deep concern with a growing federal budget deficit and unprecedented level of debt. As Congress and the Administration struggle with coming up with appropriate solutions, we believe that Federal agencies must justify the costs of all government programs, notwithstanding that the costs might be borne by others. Given the longstanding regulatory process provided by the state boards of accountancy, we do not believe it appropriate for the IRS to duplicate the cost or burden of fingerprinting CPAs.

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We are pleased with the work undertaken by the IRS with regard to the overall tax preparer program and want to emphasize our support for this program. We share the interest in improving tax administration and protecting the taxpaying public. We look forward to working with IRS as implementation of the program continues.

The AICPA is the national professional organization of certified public accountants comprised of approximately 377,000 members. Our members advise clients on federal, state, and international

The Honorable Douglas H. Shulman

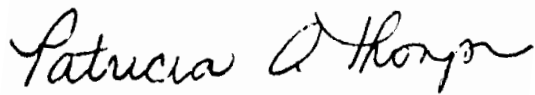
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tax matters and prepare income and other tax returns for millions of Americans. They provide services to individuals, not-for-profit organizations, and small and medium-sized businesses, as well as America's largest businesses.

We hope you will find our comments useful in your continued work regarding the implementation of the paid tax return preparer program. If you have any questions, please contact me at (401) 831-0200, or patt@pgco.com; or Edward Karl, AICPA Vice President, Taxation at (202) 434-9228, or ekarl@aicpa.org.

Sincerely,

A handwritten signature in black ink that reads "Patricia A. Thompson". The signature is written in a cursive style with a small flourish at the end.

Patricia A. Thompson, CPA
Chair, AICPA Tax Executive Committee