AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS
Comments on Proposed Regulations, REG-138637-07
Relating to Regulations Governing Practice Before the Internal Revenue Service
October 7, 2010

In REG-138637-07 ("Proposed Regulations"), the Internal Revenue Service ("IRS" or "Service") proposed amendments to Circular 230, the regulations that currently govern the practice of certified public accountants and certain other tax professionals before the Service. The Proposed Regulations provide for modifications to the general standards of practice before the IRS, as well as the standards applicable to tax returns and tax return preparers. Among other changes, the Proposed Regulations: (1) define a new category of individuals, "registered tax return preparers," who may practice before the IRS and extend the application of Circular 230 to such individuals; (2) establish the application and renewal procedures for registered tax return preparers, including the requirement of a competency test and continuing education; (3) establish procedures for continuing education providers; (4) generally conform Circular 230, section 10.34(a) with Internal Revenue Code ("IRC") section 6694; (5) expand the scope of Circular 230, section 10.36 to include a practice's tax return preparation activities; (6) expand Circular 230, section 10.51 to include a practitioner's willful failure to file on magnetic or other electronic media; and (7) solicit public comment on the regulatory burden of these proposals.

GENERAL COMMENTS

The AICPA is the national professional organization of certified public accountants comprised of approximately 360,000 members. Our members advise 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 Proposed Regulations address important areas of professional practice that will affect all tax practitioners. They propose to generally conform the professional standards in section 10.34(a) with the tax return preparer standards in IRC section 6694; include tax return preparation as an activity for which a firm must ensure it has adequate procedures in place under section 10.36 to comply with Circular 230; and adding the willful failure to file on magnetic or electronic media as disreputable conduct under section 10.51. Part I of this submission will address our comments on these matters.

The AICPA recognizes that the Proposed Regulations are part of a series of regulations and other guidance that reflect a comprehensive effort by Treasury and the IRS to enhance the standards of tax practice for all tax practitioners, including tax return preparers. We reiterate here our support for the Service's objective of increasing tax compliance and elevating ethical conduct through

the adoption of a mandatory registration process applicable to all paid tax return preparers. Part II of this submission will address our comments regarding those aspects of the Proposed Regulations that relate to the Service's return preparer regulation initiative. Specifically, our comments discuss our concerns regarding the Proposed Regulations' impact on accounting internship programs; the requirement to have continuing education courses approved by the IRS; and the examination requirement for registered tax return preparers.

On September 28, 2010, the IRS released TD 9501, final regulations regarding furnishing the identifying number of tax return preparers ("PTIN Regulations"), and TD 9503, final regulations on user fees relating to enrollment and preparer tax identification numbers ("User Fee Regulations"). These regulations establish a requirement for all paid tax return preparers to obtain a Preparer Tax Identification Number ("PTIN") and include such number on any returns they file after December 31, 2010. Despite our concerns about the breadth of its proposed regulatory regime, the IRS did not limit the applicability of the PTIN requirement to signing preparers by exempting non-signing staff supervised by a federally authorized tax practitioner (FATP), as recommended in our previous comments.[1] Nonetheless, we are encouraged by the IRS's statement in its September 28, 2010 press release that it is considering exempting employees of certain professional firms that would fall under the definition of tax return preparer under Treas. Reg. § 1-6109-2(g) from the testing and continuing education requirements in the Proposed Regulations. For reasons previously articulated, we strongly urge the IRS to exempt the non-signing staff of CPA firms from the testing and continuing education requirements.[2] If an exemption is not included in the final regulations under Circular 230, we have serious concerns that the "one size fits all" regime imposes extraordinary burden and costs on our members, primarily on small and medium-sized CPA firms, as we have previously noted.

SPECIFIC COMMENTS

I. COMMENTS ON ISSUES RELATED TO PROFESSIONAL PRACTICE

A. Proposed Section 10.34, Standards With Respect to Tax Returns and Documents, Affidavits, and Other Papers

The preamble to the Proposed Regulations notes that the standards in section 10.34(a) with respect to tax returns are being re-proposed to provide broader guidelines that are more appropriate for professional ethics standards. Under proposed section 10.34(a)(1)(i), a practitioner may not willfully, recklessly, or through gross incompetence, sign a tax return or

[1] See the AICPA's April 26, 2010 comments to the IRS on REG-134235-08, Proposed Regulations Relating to the Issuance of Preparer Identification Numbers by the IRS to Tax Return Preparers ("AICPA PTIN Comments"); and the AICPA's August 23, 2010 comments to the IRS on REG-139343-08, User Fees Relating to Enrollment and Preparer Identification Numbers ("AICPA User Fee Comments").

[2] See AICPA User Fee Comments.

claim for refund that the practitioner knows or reasonably should know contains a position that: (A) lacks a reasonable basis; (B) is an unreasonable position as described in IRC section 6694(a)(2) (including the related regulations and other published guidance); or (C) is a willful attempt by the practitioner to understate the liability for tax or is a reckless or intentional disregard of rules or regulations by the practitioner as described in IRC section 6694(b)(2) (including the related regulations and other published guidance).

Similarly, under proposed section 10.34(a)(1)(ii), a practitioner may not willfully, recklessly, or through gross incompetence, advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position, that: (A) lacks a reasonable basis; (B) is an unreasonable position as described in IRC section 6694(a)(2) (including the related regulations and other published guidance); or (C) is a willful attempt by the practitioner to understate the liability for tax or is a reckless or intentional disregard of rules or regulations by the practitioner as described in IRC section 6694(b)(2) (including the related regulations and other published guidance).

The preamble also notes that these ethical guidelines under proposed section 10.34 closely mirror the civil penalty standards in IRC section 6694 with only a few minor differences. Unlike IRC section 6694, under proposed section 10.34:

- A minimum threshold of reasonable basis always would have to be satisfied. A practitioner would be subject to discipline for a position that does not meet the reasonable basis standard even if other positions on the same return or claim for refund eliminate any understatement of tax.
- There would be no reasonable cause defense. Rather, to ensure that sanctions would not be imposed on a practitioner who acts reasonably and in good faith, there would have to be a determination that the practitioner acted willfully, recklessly, or through gross incompetence.
- Multiple practitioners from the same firm could be disciplined if their conduct in connection with the same acts did not comply with the standard of conduct under proposed section 10.34.
- A pattern of conduct would be a factor taken into account in determining whether a practitioner acted willfully, recklessly, or through gross incompetence for purposes of section 10.34.

In general, we believe that these proposed standards strike a reasonable balance in attempting to establish an equitable framework for applying sanctions under professional ethics standards while maintaining consistency to the extent possible with tax return preparer standards under IRC section 6694, provided certain terms used in the proposed standards are further defined and limited.

The recognition that a practitioner should only be subject to discipline after willful, reckless, or grossly incompetent conduct is already present in Circular 230. Proposed section 10.52, which describes violations subject to sanction, includes willful violations, reckless behavior and gross incompetence. Section 10.52 defines reckless behavior and gross incompetence by reference to section 10.51(a)(13). At the same time, proposed section 10.34 references IRC section 6694(b)(2) (including the related regulations and other published guidance). It is not clear that the two definitions are consistent or that the examples provided in the Treas. Reg. § 1.6694-3 necessarily reflect a pattern of behavior that should be subject to sanction under Circular 230. We further note that the lack of clarity in the definitions of the standards raises a serious issue of fairness to practitioners. See the agency decision in *OPR v. Gonzales*, No. 2007-28 (Doc 2010-2358, 2010 TNT 21-17), suggesting that OPR may be considering a potential change in the definition of the "willfulness" standard historically applied by OPR and noting the lack of a clear definition in Circular 230. Practitioners should have a clear understanding of the nature of behavior that will subject them to sanction.

Furthermore, we continue to be concerned about the need for a clearly defined objective test for determining what constitutes a "tax shelter." This lack of a clear definition now will also create uncertainty for tax return preparers seeking to comply with proposed section 10.34(a). Proposed section 10.34 adopts the definition of unreasonable position contained in IRC section 6694(a)(2). Under IRC section 6694(a)(2)(C), a position with respect to a tax shelter (as defined in IRC section 6662(d)(2)(C)(ii)) or a reportable transaction subject to penalty under IRC section 6662A will be considered to be an unreasonable position unless it is reasonable to believe that the position would more likely than not be sustained on its merits. Internal Revenue Code section 6662(d)(2)(C)(ii) defines a tax shelter to mean a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of federal income tax.

The term "significant purpose" is not defined in the Internal Revenue Code or current regulations (although the Treasury Department did issue now withdrawn Temp. Reg. § 301.6111-2T(b)(3)(i)). The lack of a clear definition of the term "significant purpose" for purposes of determining whether a transaction will be treated as a tax shelter has been the subject of significant concern in the context of taxpayer and tax return preparer penalty standards.[3] By incorporating the IRC section 6694 definition of "unreasonable position" in the proposed section 10.34 return reporting standards, the IRS will be incorporating this uncertainty into Circular 230. It is unfair to subject a practitioner to a loss of his livelihood based on a standard without a

[3] In a March 13, 2009 letter to the IRS, the AICPA urged the IRS and Treasury to place a high priority on providing further guidance that includes a clearly defined, objective test for determining what constitutes a tax shelter. The issue not only impacts the preparer and taxpayer accuracy related penalties, but also has implications for section 10.35 of Circular 230 and the IRC section 7525 federal tax practitioner privilege. The need for such guidance will become more urgent if proposed section 10.34 is finalized. See also the AICPA's August 28, 2009 whitepaper, *Report on Civil Tax Penalties: The Need for Reform*.

definition. It is inappropriate to enforce a standard for professional discipline based on uncertain definitions or concepts that do not have a generally accepted meaning. An expansive definition of "significant purpose" could bring many ordinary business transactions within the scope of tax shelters. Such a broad application would not appear to be consistent with the underlying legislative intent and history.

Notice 2009-5 provided interim relief with respect to the preparer penalty rules for tax shelters while the Treasury Department and the IRS considered further guidance for tax return preparers and taxpayers on the definition of tax shelter for purposes of IRC sections 6694 and 6662(d)(2)(C). Under the notice, a position with respect to a tax shelter will not be deemed an "unreasonable position" for purposes of IRC section 6694(a) if there is substantial authority for the position and the tax return preparer advises the taxpayer of the penalty standards applicable to the taxpayer in the event that the transaction is deemed to have a significant purpose of federal tax avoidance or evasion. It is unclear whether the relief provided in this notice extends to proposed section 10.34(a).

To address these issues, we recommend that a principles-based approach be adopted in section 10.34(a) to state that a practitioner may be subject to discipline under Circular 230 for willfully, recklessly, or through gross incompetence failing to meet the preparer penalty standards under IRC section 6694. If this straightforward approach is not adopted, the IRS should, at a minimum, clarify that the standards in Notice 2009-5 apply when determining if a practitioner satisfied the standards in section 10.34(a).

B. Proposed Section 10.36, Procedures to Ensure Compliance

Circular 230, section 10.36 currently requires practitioners with oversight authority and responsibility for a firm's practice of providing advice concerning federal tax issues to take reasonable steps to ensure that the firm has adequate procedures in place for purposes of complying with section 10.35 of Circular 230 and to take prompt action to correct noncompliance. The Proposed Regulations would dramatically expand the scope of section 10.36. The preamble to the Proposed Regulations indicates that the procedures to ensure compliance are being expanded to include practice involving tax return preparation activities. However, as written, the provision could be read as extending coverage to all of Circular 230. We recommend the provision be revised to better reflect the preamble's stated goal for ensuring compliance with the Circular 230 provisions relating to a firm's tax return preparation practice, as follows (suggested revision emphasized):

> Any practitioner who has (or practitioners who have or share) principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refunds, or other documents for submission to the Internal Revenue Service must take reasonable steps

to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with Circular 230 *with respect to that firm's practice of preparing tax returns, claims for refunds, or other documents for submission to the Internal Revenue Service*.

The Proposed Regulations also would expand the scope of section 10.36 to include those in the firm with "principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refund, or other documents for submission to the Internal Revenue Service." In this context it is unclear what "other documents for submission to the Internal Revenue Service" would include. Clarification by way of non-exclusive examples would be helpful to our membership.

Our membership includes every size business from sole proprietorships to the largest accounting firms. Thus, we appreciate the recognition that the procedures to ensure compliance should be applied in a flexible way that is not a rigid one-size-fits-all regulatory burden. Our members need to better understand what would be considered to be reasonable steps in establishing adequate procedures, taking into account the size and scope of the firm's tax practice. It would also be helpful to have a better understanding of who is viewed as having principal authority and responsibility for "a firm's practice of preparing tax returns, claims for refund, or other documents for submission to the Internal Revenue Service." In large firms, a number of individuals may have authority and responsibility for different activities covered by Circular 230.

C. **Proposed Section 10.51, Incompetence and Disreputable Conduct**

Standards of professional conduct for the practitioner should protect the taxpayer and the government from dishonest and incompetent preparers. The incompetence and disreputable conduct violations detailed in the current Circular 230, section 10.51 should be and are of serious concern, far more serious than the willful failure of a practitioner to comply with a procedural requirement to e-file. Unless combined with an attempt to defraud the client or the government in some way, or part of a pattern of willful disregard of the Internal Revenue laws, the failure to file on "magnetic or other electronic media" should not be equated with conduct that would be thought of as "disreputable" or "unethical." We believe the inclusion of such a procedural failure in the list of activities constituting incompetence or disreputable conduct dilutes the concept. Therefore, we strongly urge the IRS to remove the failure to e-file from the list of incompetence and disreputable conduct.

II. COMMENTS ON ISSUES REGARDING TAX RETURN PREPARER REGULATION

A. Treatment of Non-signing Preparers at CPA Firms, Particularly Interns

The AICPA has previously submitted comments expressing our serious concern regarding the requirement that non-signing tax return preparers working for CPA firms must qualify as registered tax return preparers even though professional responsibility for their work is fully assumed by state-licensed CPAs who sign the returns. Such an approach could have a very serious impact, requiring the registration of, for example, part-time employees, temporary busy season employees, and non-signing employees who are in the process of becoming licensed CPAs. The resulting burden, particularly from the examination and continuing education requirements, could negatively affect both the supply of individuals willing to qualify to apply for such jobs and the willingness of firms to hire them. We continue to believe that the inclusion of these employees of CPA firms in the IRS's return preparer initiative is both unnecessary and burdensome, as stated in our previous comments. In further support of our position, we wish to focus our present comments on the impact that the PTIN Regulations and Proposed Regulations would have on one segment of the non-signing tax return preparer universe, specifically, interns (i.e., student-employees).

We do not believe that student interns should be included in the IRS's tax return preparer program. Subjecting student interns to the additional burdens and costs of the return preparer regulatory regime will deter interest in tax accounting internships, both on the part of students and accounting firms, and will do little to further the stated goals of the IRS in implementing the return preparer regulatory regime. Tax accounting internship programs benefit the general taxpaying public by providing crucial training to young professionals who are entering the accounting profession, and who may become tomorrow's tax compliance professionals. The intern training programs at CPA firms result in better-prepared tax accounting professionals that can further the IRS's goal of increasing taxpayer compliance. We were therefore disappointed by the IRS's extension of the PTIN requirement to the intern scenario published in the FAQs available on the tax return preparer registration webpage. The IRS's interpretation of Treas. Reg. § 1.6109-2(g) as applied to student interns presents firms that sponsor tax accounting internships with an unattractive choice: (1) either remove the opportunity for meaningful training from their student internship programs by limiting student interns to administrative tasks, or (2) require student interns to obtain a PTIN and become "registered tax return preparers" at significant cost to the student interns, a cost that some will find prohibitive.

Adding costs associated with the Service's return preparer regulation regime to internship programs will be a disincentive for accounting firms to sponsor such programs. While some firms benefit from employing student interns to assist during busy seasons and through a potential advantage in recruiting promising students to join the firm upon completion of their

degrees, internship programs already involve significant short-term costs, including the costs of recruitment, training and supervision. Recruitment often requires convincing students to try their skills in the tax area, versus other potential areas in the field of accounting, such as provision of attest services. Then, most students receive training and coaching on basic tax law and return preparation skills, such as the use of tax return preparation software and work paper technique. Finally, the work of students must be fully and carefully reviewed because of their lack of experience. These teaching moments that are shared between CPAs and other young entrants into the profession provide a significant benefit to the CPA profession and to aspiring CPAs, but they can be costly for firms in the short term. We believe that, in general, the costs and benefits of internship programs are closely balanced for most firms, and that adding the IRS-imposed return preparer regulation regime costs will alter this balance. The additional costs of obtaining a PTIN, and the competency testing and continuing education requirements if adopted as proposed in the Proposed Regulations, could make tax accounting internship programs a money-losing proposition for accounting firms, causing many firms to end their programs or make the internship experience less meaningful by limiting interns' work to administrative tasks.

Applying the PTIN Regulations and the Proposed Regulations to student interns will also act as a deterrent to students interested in entering the tax profession, and specifically tax compliance work. If the sponsoring firm pays the costs associated with obtaining a PTIN, the student intern will be subjected to testing and continuing education requirements that they do not face as entrance requirements in other areas of accounting practice prior to obtaining their professional credentials. For students already facing the education and testing requirements to secure their professional licenses, additional testing and education requirements associated with a tax internship will be highly unattractive. Likewise, for those firms that restrict their interns' work so as to exclude them from the definition of a tax return preparer under Treas. Reg. § 1-6109-2(g), the choice to perform administrative tasks in a tax practice when students could gain meaningful experience in other non-tax accounting practices places tax practices at a distinct disadvantage in recruiting accounting interns.

We also question whether the IRS has fully considered the practical consequences of including student interns in the tax return preparer regulatory regime. How will the IRS perform tax compliance checks on this population, when many of them have not yet been required to file a return previously as they often do not possess prior work experience? Will the IRS be able to verify on the basis of third-party reporting that no reporting obligation existed and accordingly issue the PTIN? Also, student interns are more likely than other categories of return preparers to leave the tax profession as they have not committed to the profession prior to initiating the internship. For this reason, there may be a high percentage of PTINs issued to student interns that become obsolete.

For all the reasons above, we believe the IRS should reconsider its decision to require student interns to obtain PTINs. This is clearly overreaching and is inconsistent with the stated policy goals of the IRS as expressed in Publication 4832. Failing a reversal of that decision, then we strongly urge the Service to provide an exception to the Proposed Regulations that is sufficiently broad so as to exclude interns from the proposed testing and continuing education components of Circular 230 if their work is performed under the direction and control of a licensed CPA, attorney, or enrolled agent. As noted above, we request that similar relief be provided to all non-signing preparers working at CPA firms, however, if the IRS is unwilling to adopt that broader exemption, then we believe a narrower exemption targeted to student interns is appropriate.[4]

B. Proposed Section 10.9, Continuing Education Programs and Providers

We appreciate that the IRS and Treasury seek to ensure the provision of quality continuing education programs as part of the proposed modifications to Circular 230. The AICPA has long championed continuing professional education within the accountancy profession and in conjunction with the National Association of State Boards of Accountancy (NASBA), the AICPA issued the Statement for Standards on Continuing Professional Education (CPE) Programs. As discussed further below, we request clarification of proposed section 10.9 relating to the qualification of continuing education programs and continuing education providers, and express our concern that the Proposed Regulations fail to recognize both the volume of continuing education courses that will require IRS approval and the timeliness required in the approval process.

Because continuing education is a licensing requirement in every state except Wisconsin, there already exists a comprehensive system to monitor the quality of CPE courses for CPA firms. AICPA-provided CPE is accepted for licensing purposes by all state boards of accountancy. Moreover, NASBA provides a program whereby CPE providers, after demonstrating compliance with recognized national standards, are listed in the National Registry of CPE Sponsors. Multiple jurisdictions accept CPE credit sponsored by members of NASBA's CPE registry. According to NASBA, there are approximately 1,700 approved continuing education provider sponsors in the program. As part of the process of joining the national registry, CPE sponsors submit sample program materials and a full list of planned courses for NASBA review. All courses provided by National Registry of CPE Sponsors members must meet the national standards issued by AICPA and NASBA. These standards are comparable to the standards enumerated in proposed section 10.9(a)(3). Membership in the National Registry of CPE Sponsors is renewed annually, so these CPE providers are subject to regular review. Thousands of continuing education programs are presented on an annual basis through the National Registry of CPE Sponsors. Many of these sponsors are accounting and law firms that offer in-house training to their employees.

[4] For example, an exemption could be drafted for full or part time students enrolled in accredited law or accounting programs engaged in temporary employment of a limited timeframe as part of an internship experience.

Proposed section 10.9(a)(1) recognizes the following entities as continuing education providers: (i) accredited educational institutions; (ii) organizations recognized for continuing education purposes by the licensing authority of any U.S. state; and (iii) organizations recognized by the director of the Office of Professional Responsibility as offering a qualified continuing education program. AICPA believes that our organization is recognized within the meaning of proposed section 10.9(a)(1)(ii) because our AICPA-provided CPE is accepted by the state boards of accountancy as qualifying CPE for licensing purposes. Furthermore, we believe the organizations that are members of the NASBA National Registry of CPE Sponsors should qualify as well for the same reason, as such organizations are recognized CPE providers in those states that accept the National Registry.

We also strongly recommend that Treasury exempt from the approval process set forth in proposed section 10.9(a)(2) those programs offered by continuing education providers described in section 10.9(a)(1)(ii), including AICPA and organizations that are members of the NASBA National Registry of CPE Sponsors. The requirement to have these continuing education programs approved by the Office of Professional Responsibility (OPR) would result in a significant burden on both the IRS and continuing education providers. As explained below, the costs associated with this burden ultimately would be borne by taxpayers. Inclusion of these providers in the requirements of proposed section 10.9(a)(2) would only add to the Service's burden in administration of the program, impede the timely offering of continuing education programs and increase the cost of tax preparation to taxpayers. Given the existence of a robust CPE oversight system through the state boards of accountancy, we fail to see the justification for the added burden on the providers recognized by state boards of accountancy and the IRS that OPR approval of continuing education courses would entail.

OPR approval of continuing education courses for registered tax return preparers would be burdensome to CPA firms because it would essentially create a two-tiered system of continuing education within the firm – one for the CPAs and one for the newly designated registered tax return preparers – that is unnecessary. The AICPA and the commercial CPE providers that are approved by NASBA have already expended resources to ensure their programs meet nationally recognized standards. The duplicative cost of obtaining IRS approval likely would be passed on to the consumers of their programs – i.e., CPA firms. The same costs would apply to those CPA firms that are themselves NASBA sponsors. It is reasonable to conclude that these additional costs would be result in higher return preparation fees for taxpayers.

We believe the burden on the IRS would be even greater. Significant resources would be required each year by OPR to address the thousands of continuing education programs that would be submitted; the costs for these resources ultimately also would be borne by taxpayers. In addition to the costs to taxpayers in requiring OPR approval of all continuing education

programs, there is the logistical issue of how the Service can timely respond to submissions. Due to the dynamic nature of our federal tax system, continuing education programs must be updated each year for new material related to changes in the Internal Revenue Code and regulations, new rulings and cases, and changes in general tax administration. Therefore, in many instances the approval of a continuing education program would not be a single event but would require multiple submissions in a year. Significant resources would be required each year to address the thousands of continuing education programs that would be submitted; the costs for these resources ultimately also would be borne by taxpayers. In many instances, continuing education programs need to be available to tax return preparers quickly. For example, the *Hiring Incentives to Restore Employment Act* (HIRE Act) was enacted on March 18, 2010 and, due to the potential immediate impact on employers, continuing education providers needed to roll out new programs on the HIRE Act changes as quickly as possible. There are many instances where there is little or no lead time between new tax legislation or rulings and their effective dates. Accordingly, tax professionals need immediate access to related continuing education programs. In these instances, there could be significant delays in making these programs available if every continuing education provider were required to have its program first vetted through an IRS approval process.

Further, if our recommendations above are not adopted, we recommend that prior to the implementation of an approval process for continuing education programs, the Service issue, in a proposal format, the specifics of the process and solicit public comments. An integral part of the design of the approval process should include a dialog with AICPA and NASBA as well as other professional education providers. These organizations have significant industry experience in the field of continuing education in taxation which can be drawn upon by the Service to develop a quality process and, at the same time, reduce the costs to taxpayers and tax return preparers.

C. Section 10.4, Examination Requirement to Become a Registered Tax Return Preparer

Section 10.4 of the Proposed Regulations requires that an applicant to become a registered tax return preparer demonstrate "competence in Federal tax return preparation matters" through a written examination to be administered by the IRS. Given the high costs and burdens of competency testing, we believe that the IRS should delay implementation of any testing regime. The IRS should first evaluate whether the use of PTINs and extension of Circular 230 to all practitioners, combined with IRS tracking initiatives, is sufficient to address unethical and incompetent tax return preparation. The IRS should also likewise study whether it is necessary for non-signing preparers to be included in the competency testing, as it has not been shown that the additional burdens related to such an examination would generate a commensurate benefit to the tax system.

The Proposed Regulations state the IRS's intention to offer two exams – one that will cover wage and non-business income Form 1040 series returns, and one that will cover wage and small business income Form 1040 series returns. The Proposed Regulations also seek comment on whether a tax return preparer who solely prepares tax returns other than Form 1040 series returns should be permitted to prepare those other tax returns without successfully completing any examination. We support an exemption from competency testing for those tax return preparers that solely prepare returns other than Form 1040 series returns. We believe that subjecting practitioners preparing estate returns, Forms 5500, and the various corporate and partnership returns to a test based on the Form 1040 series is a waste of resources – both the practitioner's and the Service's. Passing an exam on principles of individual income taxation will do little to ensure that a preparer of estate tax returns properly completes Form 706. Moreover, we believe there are very few practitioners who practice solely in the corporate and partnership areas that are not CPAs, attorneys or enrolled agents. Imposing testing requirements on these individuals would be a great burden on them while adding relatively little to the IRS's goal of increasing overall tax return preparer competence.

D. Appropriate Title for New Category of Circular 230 Practitioners

In light of our previously submitted comments on the topic, we were disappointed to see in the PTIN Regulations that the Service adopted the term "registered tax return preparer" to refer to the new category of Circular 230 practitioners described in proposed section 10.4(c) who are not licensed attorneys, CPAs or enrolled agents. We believe the term "authorized tax return preparer" is more appropriate with respect to the new category of Circular 230 practitioners. Use of the term "registered" tends to imply a higher level of professional capability and education and could mislead the public. Unlike other "registered" professionals, such as registered nurses and registered architects, a "registered tax return preparer" would not be required to have completed any course of study or have any academic grounding in the field of taxation. While we recognize that the Treasury Department and IRS did not adopt this recommendation in finalizing the PTIN Regulations, we feel compelled to express this concern again given the confusion that the term will create in the marketplace.

With respect to proposed section 10.30, the AICPA supports the prohibition of the use of the term "certified" in solicitations or other representations by unenrolled preparers who ultimately register for PTINs and qualify for the new category of Circular 230 practitioners. We also recommend that the term "listed" be substituted for the term "designated" in the last sentence of section 10.30, to further clarify the relationship of such preparers with the Service and remove any inference that the IRS is conferring any credential to them. That sentence would then read, "An example of an acceptable description for registered tax return preparers is listed as a registered tax return preparer with the Internal Revenue Service."

In addition, we understand the IRS is contemplating the creation of a look-up database of the all persons who have registered with the IRS and received a PTIN, including those federally authorized tax practitioners such as CPAs, attorneys and enrolled agents, in addition to the new category of registered tax return preparers. If the IRS proceeds with this plan, we encourage the IRS to enable the database to specifically identify the credential allowing the person to practice before the IRS, including the distinction among the individual's practice rights based on whether an individual is a federally authorized tax practitioner (CPA, attorney or EA) or a registered tax return preparer.

CONCLUSION

As noted previously, the AICPA endorses 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. We believe that if the Service modifies certain aspects of the Proposed Regulations in consideration of our concerns and recommendations included in our comments, the return preparer regulation initiative can be more effective and less burdensome to return preparers. For additional consideration, we intend to provide a separate submission concerning the Service's regulatory analyses of the Proposed Regulations and additional responses to the Service's requests for comments contained in those analyses.