



RETURN PREPARER OVERSIGHT

Taxpayers Are Harmed by the Absence of Minimum Competency Standards for Return Preparers

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Return preparers prepare over half of individual income tax returns and play a key role in a successful tax administration. Taxpayers, with limited tax knowledge themselves, are ill-equipped to assess a preparer's expertise in tax laws and tax return preparation. Anyone can hold themselves out to be a return preparer, and not all return preparers have professional credentials. Return preparers without credentials are not required to pass any competency tests or take any educational courses on tax return preparation, and they are not subject to any ethical rules.

The absence of minimum competency standards for preparers of federal tax returns leaves taxpayers, particularly low-income taxpayers, vulnerable to return preparers' inadvertent errors that could cause them to overpay their tax – or to underpay their tax and face IRS enforcement action subjecting them to additional tax, penalties, and interest. In fact, about 92 percent of the total amount of dollars of audit adjustment made on 2020 returns claiming the Earned Income Tax Credit (EITC) occurred on returns prepared by non-credentialed return preparers. Those errors harm our most vulnerable taxpayers. Minimum competency standards would also likely professionalize the return preparation industry and weed out unscrupulous return preparers. Because taxpayers are ultimately financially responsible for inaccurately prepared returns, minimum competency standards for return preparers are an important taxpayer protection measure.

EXPLANATION OF THE PROBLEM

Both taxpayers and the tax system depend heavily on the ability of return preparers to prepare accurate tax returns. Taxpayers are often ill-equipped to navigate the complicated tax laws and must seek the services of return preparers to prepare and file their tax returns. For example, the IRS received 146 million 2021 individual income tax returns through September 29, 2022, and paid return preparers prepared 53 percent of those returns.¹ Of the 2021 individual income tax returns that paid return preparers prepared through September 29, 2022, non-credentialed return preparers prepared approximately 58 percent.² Of the approximate 12.9 million 2021 business returns received through September 29, 2022, paid return preparers prepared nearly 79 percent.³

Anyone can hold themselves out to be a return preparer, and not all return preparers have professional credentials. Return preparers who hold attorney, certified public accountant (CPA), or enrolled agent (EA) credentials must pass competency examinations, satisfy continuing education requirements, and are subject to standards of conduct in 31 C.F.R. Part 10, which are reprinted in Treasury Department Circular 230, Regulations Governing Practice Before the Internal Revenue Service. In addition, the IRS requires volunteer preparers to pass competency examinations as part of the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs.⁴ However, most paid preparers are non-credentialed and are not required to pass any competency tests or take any educational courses on tax return preparation, and they are not subject to any ethical rules.⁵

The evolution of the commercial tax return preparation and filing industry has made it easier for inexperienced and untrained preparers to enter into the business. Tax return preparation software is widely available, reasonably priced, and the user-friendly question-and-answer format enables a person with almost no knowledge or skill to prepare a tax return by simply working through the software's prompts. Undoubtedly, software has opened the doors to enable anyone, with good or ill intent, to present oneself as a return preparer.⁶

The lack of minimum competency standards harms taxpayers in the following ways:

- Taxpayers may not understand the differences in the education and training requirements of various return preparer credentials;
- Taxpayers are ultimately financially responsible for inaccurately prepared tax returns;
- Low-income taxpayers are at significant risk of harm caused by incompetent or unscrupulous return preparers;
- Research studies and IRS data found more noncompliance among non-credentialed return preparers;
- Non-credentialed preparers cannot represent taxpayers on audits of prepared returns;
- Not all return preparers are subject to standards of conduct or ethical rules; and
- The lack of minimum competency standards forces the IRS to take a reactive approach to return preparer noncompliance.

ANALYSIS

Background

National Taxpayer Advocate's Legislative Proposals

Since 2002, the National Taxpayer Advocate has been a strong proponent of legislation providing the IRS authority to establish a return preparer oversight program that would include minimum competency standards for paid return preparers.⁷ The National Taxpayer Advocate's legislative proposals included a program to register, test, and certify unenrolled preparers. To strengthen the program, the proposals provided for increased preparer penalties and improved due diligence requirements. The National Taxpayer Advocate

also recommended that the IRS mount a comprehensive taxpayer education campaign to inform taxpayers how to choose a competent preparer and remind them to obtain a copy of the tax return with the preparer's signature.⁸ Such proposed oversight has received widespread support from various practitioner groups and members of Congress.⁹

Pre-Loving Return Preparer Program

Pursuant to 31 U.S.C. § 330, the Secretary is authorized to regulate the practice of representatives before the Department of the Treasury. Circular 230 defines "practice" and prescribes who may practice before the IRS. In 2009, the IRS determined that it had administrative authority to regulate paid tax return preparation as "practice" before the IRS.¹⁰ The IRS initiated extensive hearings and discussions with stakeholder groups to receive comments and develop a system within which all parties believed they could operate. The IRS, together with Treasury, implemented the program in 2011. However, it was terminated in 2013 after a U.S. district court held, and the U.S. Court of Appeals for the D.C. Circuit affirmed, in *Loving v. Internal Revenue Service* that the IRS does not have the authority to impose preparer standards without statutory authorization.¹¹

Since the 2011 IRS return preparer program was terminated, the Department of the Treasury has supported return preparer oversight in its "Greenbook" of revenue proposals.¹² House and Senate members have introduced legislation to provide the IRS with the statutory authority to establish and enforce minimum standards. Most recently, Congressmen Panetta and Rice sponsored bipartisan authorizing legislation, the Taxpayer Protection and Preparer Proficiency Act of 2021.¹³

The IRS's Voluntary Annual Filing Season Program

Absent mandatory minimum competency standards, the IRS created the voluntary Annual Filing Season Program (AFSP) to encourage the accurate preparation of individual income tax returns by unenrolled preparers. In addition to satisfying annual continuing education requirements and annually renewing their Preparer Tax Identification Number (PTIN),¹⁴ participating preparers must consent to adhere to the duties, restrictions, and sanctions relating to practice before the IRS in Circular 230.¹⁵ Upon completion of these requirements, preparers receive a Record of Completion, which enables them to represent taxpayers before the IRS during an examination of a tax return or claim for refund they prepared and signed (or prepared if there is no signature space on the form).¹⁶ They are included in a public database of return preparers on the IRS website.¹⁷ Unfortunately, participation in the program is low as the IRS only issued approximately 62,000 AFSP Records of Completion in calendar year (CY) 2021.¹⁸

Several States Have Return Preparer Oversight Programs

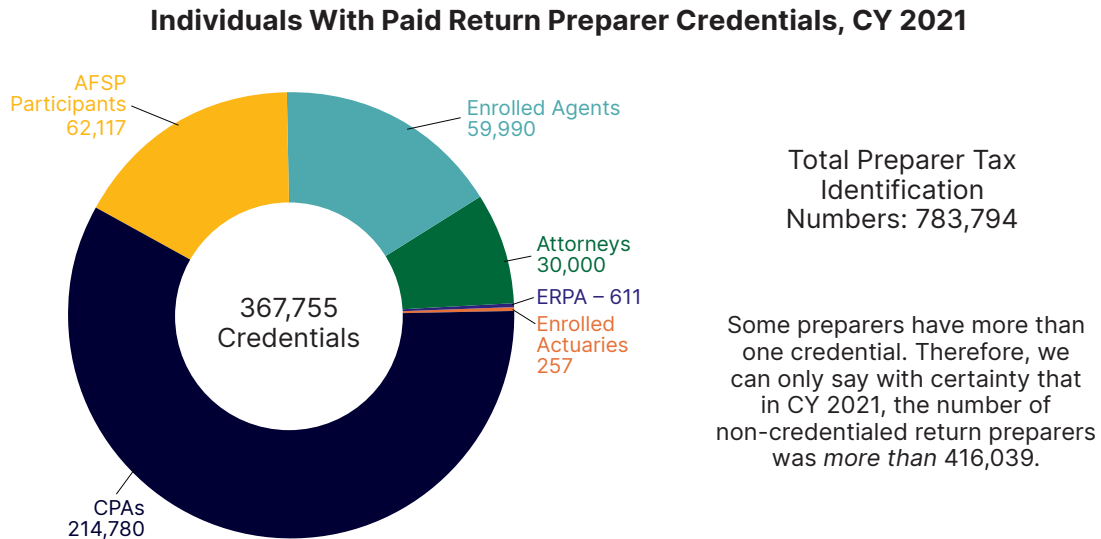
Six states have varying degrees of oversight over return preparers who prepare state tax returns: California, Connecticut, Iowa, Maryland, New York, and Oregon.¹⁹ Approximately 17,000 preparers who prepared 2020 individual income tax returns were subject to the requirements of at least one of these six states.²⁰ The stringency of the requirements varies among the states. Of the six states, only Maryland and Oregon have minimum competency examinations. California, New York, and Oregon have qualifying minimum education or training requirements to enter the profession. Further, five states have continuing education requirements, with the exception being Connecticut.²¹ However, oversight in six out of 50 states is not enough to protect taxpayers, especially when there is no uniformity among the requirements imposed by each state.

Taxpayers May Not Understand the Differences in the Education and Training Requirements of the Various Return Preparer Credentials

Selecting a return preparer can be a daunting task for many taxpayers. There are many different types of paid return preparers, including attorneys, CPAs, EAs, enrolled retirement plan agents (ERPAs), enrolled

actuaries, AFSP participants, and non-credentialed preparers (also called unenrolled return preparers).²² Many taxpayers are confused by the options and do not understand the difference between the preparers' credentials. Figure 2.8.1 provides the number of individuals with each of the different paid return preparer credentials.

FIGURE 2.8.1²³



Note that the sum of the credentials in Figure 2.8.1 is 367,755, which is significantly lower than the total number of PTINs, 783,794. The difference (416,039) is not the number of non-credentialed return preparers because some return preparers possess more than one credential. Therefore, we can only say with certainty that in CY 2021, the number of non-credentialed returns preparers was *more than* 416,039.

The different return preparer credentials listed in Figure 2.8.1 have varying degrees of required training. Attorneys and CPAs are subject to education and examination requirements set by state licensing authorities. EAs must pass a three-part IRS examination and complete continuing education requirements.²⁴ The IRS requires AFSP participants to complete continuing education requirements to participate in the program. It no longer accepts ERPA applications, but existing ERPAs had to pass an examination in the past, and to renew the credential, they must satisfy continuing education requirements.²⁵ The Joint Board of Enrollment of Actuaries administers the enrolled actuary program and sets the standards, which include experience and knowledge requirements.²⁶ Even volunteer preparers who participate in the VITA or TCE programs must complete training courses, pass an examination before the IRS certifies them, and complete annual training to ensure they are current on new tax laws.²⁷ In contrast, non-credentialed return preparers, the largest category of paid return preparers, have no required training.

We are not advocating that taxpayers select one type of return preparer over another. Taxpayers should have the ability to make informed decisions upon entering into a transaction that could have serious financial consequences. A substantial portion of non-credentialed return preparers are very knowledgeable and highly skilled, but nothing prevents inept or unscrupulous return preparers from joining the profession and causing harm to taxpayers. Unfortunately, taxpayers may not understand the differences in the credentials or have the ability to assess the competency of a preparer's expertise in tax return preparation. A 2017 national poll conducted by a coalition of consumer advocates and community organizations found that 68 percent of respondents believed that either the state or federal government already required paid return preparers to be licensed, when in reality, at that time, only four states (California, Maryland, New York, and Oregon) required mandatory standards for paid tax return preparers.²⁸

Each year, the IRS publishes tips on selecting a tax return preparer, including these practical tips: check with the Better Business Bureau, ask about fees, make sure the preparer signs and enters the PTIN on the return, be wary of promises to obtain larger refunds, check the preparer's credentials, etc.²⁹ However, merely warning taxpayers about the potential incompetence or outright fraud in the return preparer population is insufficient. Congress should authorize the IRS to do more to protect taxpayers.

Taxpayers Are Ultimately Financially Responsible for Inaccurately Prepared Tax Returns

Without any federal oversight in place, taxpayers must conduct their own due diligence when choosing a tax professional. As noted above, it is difficult for an average taxpayer to understand the difference between the various types of return preparer credentials. Further, if a return preparer prepares an inaccurate return, the taxpayer is ultimately financially responsible for the resulting balance due. Many taxpayers possess a false sense of security when they mistakenly believe that their return preparer is responsible for a mistake on the tax return they prepared. It is the taxpayer who must pay the IRS any additional amounts due, including penalties and interest. Taxpayers cannot simply point a finger at their return preparer to avoid liability for an inaccurately prepared return. In addition, the IRS may not necessarily abate a penalty for reasonable cause merely because the taxpayer relied on an inept return preparer.³⁰

Low-Income Taxpayers Are at Significant Risk of Harm Caused by Incompetent or Unscrupulous Return Preparers

Refundable tax credits, such as the EITC, Child Tax Credit, Additional Child Tax Credit, and American Opportunity Tax Credit have brought into the tax system low-income and other vulnerable taxpayers who would not otherwise need to file a return or who would file very simple returns with no tax return preparation assistance. Due to the complexity of refundable credits, many taxpayers who are eligible to claim the credits reach out to paid return preparers to prepare and file their tax returns. These taxpayers are susceptible to the harm created by incompetent or unscrupulous return preparers. A 2014 TAS phone survey of taxpayers eligible for assistance from Low Income Taxpayer Clinics found that “the low-income population is vulnerable and more likely than the population at large to be taken advantage of by unskilled or unscrupulous tax return preparers.”³¹

As illustrated in Figure 2.8.2, non-credentialed return preparers prepared a substantial percentage of prepared 2020 returns claiming EITC.

FIGURE 2.8.2, Tax Year (TY) 2020, Forms 1040 Filed With and Without Schedule EIC (Form 1040), Earned Income Credit, by Type of Paid Preparer Credential (Through September 29, 2022)³²

Preparer Credential	EITC Returns Prepared	EITC Paid Preparer Returns	Non-EITC Returns Prepared	Non-EITC Paid Preparer Returns
CPA	1,199,411	9.29%	23,109,202	31.64%
EA	1,125,029	8.71%	9,751,250	13.35%
Unknown	368,001	2.85%	1,803,486	2.47%
Attorney	42,408	0.33%	741,791	1.02%
Enrolled Actuary	3,319	0.03%	10,449	0.01%
ERPA	79	0.00%	224	0.00%
Non-Credentialed/Unenrolled	10,172,519	78.79%	37,617,464	51.51%
Total	12,910,766	100.00%	73,033,866	100.00%

As indicated in Figure 2.8.2, paid non-credentialed return preparers prepared almost 79 percent of the prepared 2020 individual income tax returns with Schedule EIC (Form 1040), Earned Income Credit, compared to only 52 percent of the prepared individual income tax returns without a Schedule EIC.

The negative impact of no federal minimum competency standards on low-income taxpayers is illustrated in the data on TY 2020 EITC audit adjustments in Figure 2.8.3.

FIGURE 2.8.3, TY 2020 EITC Audit Adjustments by Paid Preparer Credential (Through September 29, 2022)³³

Preparer Credential	EITC Returns Prepared by Paid Return Preparers Under Audit	Paid Return Preparer EITC Returns Under Audit	Total EITC Audit Adjustments	Dollars Adjusted in EITC Audits
Attorney	207	0.17%	\$765,044	0.14%
CPA	4,523	3.68%	\$13,295,650	2.38%
Enrolled Actuary	36	0.03%	\$173,341	0.03%
EA	5,888	4.80%	\$21,643,327	3.88%
ERPA	2	0.00%	\$8,936	0.00%
Non-Credentialed/Unenrolled	110,377	89.91%	\$515,024,295	92.22%
Unknown	1,726	1.41%	\$7,552,133	1.35%
Total	122,759	100.00%	\$558,462,726	100.00%

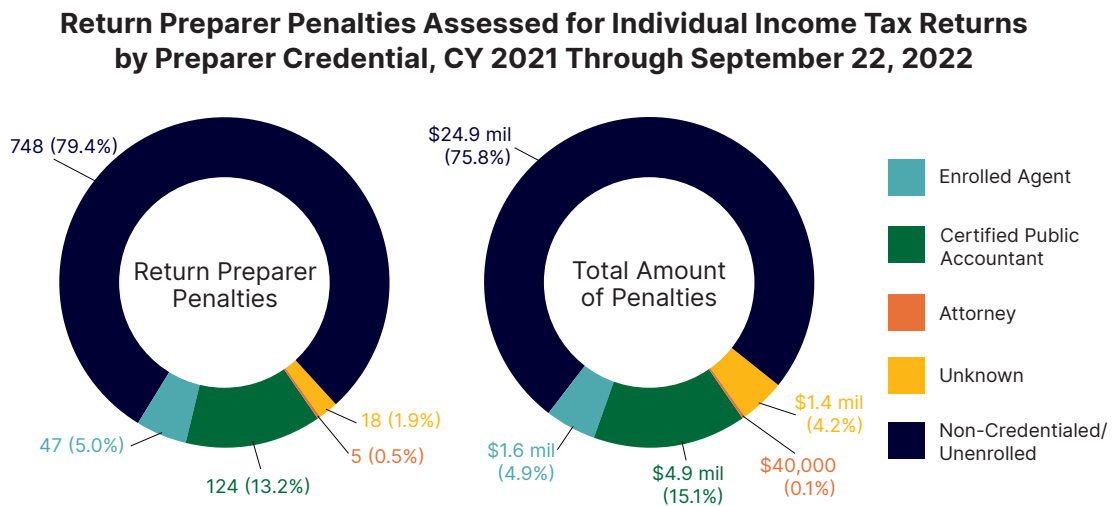
Paid return preparers prepared about 79 percent of 2020 EITC returns, but over 92 percent of the total amount of audit adjustments (in dollars) occurred on returns prepared by non-credentialed paid return preparers. Requiring all paid return preparers to demonstrate minimum competency in the tax laws and return preparation could reduce the amount of errors made on returns, especially those claiming EITC, and the impacted taxpayers would avoid the burdens associated with enforcement actions.

Research Studies and IRS Data Found Noncompliance Among Non-Credentialed Preparers

Numerous studies have consistently found significant noncompliance on returns prepared by non-credentialed return preparers.³⁴ For example, the Government Accountability Office,³⁵ the Treasury Inspector General for Tax Administration (TIGTA),³⁶ and the New York State Department of Taxation and Finance³⁷ conducted “shopping visits” during which officials posed as taxpayers seeking return preparation assistance. Each of the shopping visit studies found significant inaccuracies reported on the returns prepared during those visits.

A 2014 IRS study found that non-credentialed return preparers not affiliated with a national tax return preparation firm were responsible for “the highest frequency and percentage of EITC overclaims.” The IRS study found that half of the EITC returns prepared by unaffiliated non-credentialed return preparers contained overclaims, and the overclaim averaged between 33 percent and 40 percent.³⁸ Again, as stated above, the impacted taxpayer clients have the ultimate financial responsibility to pay the resulting balance due when they are subject to enforcement action by the IRS.

IRS data also shows that it assessed a significant percentage of return preparer penalties for individual income tax returns against non-credentialed paid return preparers. As illustrated in Figure 2.8.4, the IRS assessed approximately 76 percent of the return preparer penalties during CY 2021 for individual income tax returns against non-credentialed paid return preparers.

FIGURE 2.8.4³⁹

*Totals may not equal 100% due to rounding.

Further, a review of IRS Discriminant Index Function (DIF) scores – an IRS estimate of the likelihood that an audit of the taxpayer’s return would produce an adjustment – showed that the returns prepared by non-credentialed paid return preparers are more likely noncompliant than those prepared by credentialed paid return preparers. Specifically, non-credentialed paid return preparers prepared about 44 percent of 2020 individual income tax returns in the three highest deciles of DIF scores. This is compared to 36 percent of the returns in those same DIF score deciles prepared by credentialed preparers. Thus, based on DIF scores, it appears that non-credentialed paid return preparers are preparing returns with a higher level of noncompliance.⁴⁰

Non-Credentialed Preparers Cannot Represent Taxpayers on Audits of the Prepared Return

The IRS has taken steps within its statutory authority to limit the ability of certain types of return preparers to represent taxpayers before the IRS. Attorneys, CPAs, and EAs have unlimited representation rights, meaning with the proper authorizations, they can represent their clients on any matters including audits, payment/collection issues, and appeals.⁴¹ AFSP participants have limited representation rights, meaning they can represent clients whose returns they prepared and signed, but only before revenue agents, customer service representatives, and similar IRS employees, including TAS.⁴² Non-credentialed return preparers can only prepare tax returns and cannot represent taxpayers before the IRS.⁴³ While the IRS does provide information about the different representation abilities among the credentials on its website,⁴⁴ it is reasonable for many taxpayers to assume that the person who prepares their return would also be able to represent them on an audit of that return.

Not All Return Preparers Are Subject to Standards of Conduct or Ethical Rules

Non-credentialed return preparers are not necessarily subject to any ethical rules or standards of conduct. Authorizing IRS oversight over non-credentialed return preparers would bring these return preparers under the purview of Circular 230, which the Office of Professional Responsibility (OPR) administers and enforces.⁴⁵ Circular 230 is a body of regulations that provide standards of conduct for the profession and details the covered tax professionals’ duties and obligations, sanctions for violations, and administrative procedures for discipline.⁴⁶ In addition, the proposed IRS-developed minimum competency exam should include ethics topics and introduce return preparers to the standards of conduct required under Circular 230.

To strengthen the enforcement of these standards of conduct, the IRS should conduct a robust outreach and education campaign on how to report suspected violations of Circular 230.⁴⁷ The targeted recipients of these outreach and education efforts should be taxpayers, tax professionals, and IRS employees.

The Lack of Minimum Competency Standards Forces the IRS to Take a Reactive Approach to Return Preparer Noncompliance

Without a proactive program requiring minimum competency standards, the IRS is left with a reactive approach to return preparer oversight. The IRS has Title 26 penalties and sanctions under Circular 230 at its disposal.⁴⁸ However, these enforcement measures only allow the IRS to intervene *after* harm to a taxpayer has occurred.

The most effective preventive approach is to ensure that the return preparers are competent in the tax laws. Return preparers should demonstrate their competency before they even begin to prepare taxpayers' returns. A competency test would ensure that the preparers have basic tax law knowledge, the skills to complete tax forms, and the ability to find information in the tax form instructions, publications, and other IRS guidance. In addition, because the tax laws continually evolve, annual continuing education requirements are key to ensuring that return preparers stay informed on the latest tax law changes. Thus, the establishment of minimum standards would professionalize the industry, protect taxpayers by ensuring that return preparers are competent in the tax laws, and likely get rid of a majority of unprofessional or unethical individuals.

Preventing Return Preparers From Going Underground and Maintaining Accessibility of Return Preparation Services

Requiring non-credentialed paid return preparers to demonstrate competency will impose a monetary cost that they will ultimately pass on to their taxpayer clients. Requiring these return preparers to pass a competency examination and complete continuing education courses will demand a significant time commitment from them. As a result, some preparers might opt to "go underground." That is, they will continue to prepare returns, but they will not provide the appropriate preparer signature and PTIN on the prepared return, in many cases making it appear as if the taxpayer self-prepared the tax return. The IRS refers to preparers who do not adequately identify themselves on returns they prepare as "ghost preparers." Each year, the IRS issues a warning to taxpayers about the harm imposed by ghost preparers.⁴⁹ While there is a real risk of driving some preparers underground, the IRS can address this risk in a variety of ways. First, the IRS can strengthen its taxpayer awareness campaign immediately before and during the filing season to ensure that taxpayers understand what to expect from their return preparer and where to report preparers who violate the requirements.⁵⁰ Second, the IRS is working on improving its ability to effectively identify ghost preparers. Third, to send a clear message to potential ghost preparers, the IRS should prioritize the assessment and collection of the IRC § 6695 return preparer penalties, especially the IRC § 6695(b) penalty for failure to sign the return and the IRC § 6695(c) penalty for failure to furnish a PTIN.⁵¹

There is also a risk that the burdens imposed on return preparers by the proposed oversight program would drive some return preparers out of the profession. This is a concern that the IRS should address once it obtains the legislative authority to design and implement the program. Taxpayers have the *right to retain representation*.⁵² While it is important that such representation is competent, it must also be accessible. As the IRS designs each aspect of the oversight program, it is crucial that it strives to minimize the burden imposed on return preparers. The benefit of imposing each program requirement must be weighed against the risk that it could ultimately harm taxpayers by impacting the accessibility or affordability of return preparation services, especially for low-income and international taxpayers. It must also consider the administrability of each requirement. For example, if the IRS obtains legislative authority to impose minimum standards on paid return preparers, after it consults all impacted stakeholders, it must balance the benefits gained by imposing the requirements on nonsigning return preparers against the burden imposed on these tax professionals. It must also consider how the IRS would be able to identify violations and enforce the requirements.⁵³

CONCLUSION AND RECOMMENDATIONS

The absence of minimum competency standards for paid return preparers leaves taxpayers vulnerable to inadvertent errors that could cause them to overpay their tax – or to underpay their tax and face IRS collection action. It leaves some taxpayers open to unscrupulous preparers, many of whom the IRS could eliminate if it professionalized the return preparation industry.

IRS data and external research studies support the need for minimum competency standards for paid return preparers as a taxpayer protection measure. To minimize the harm inflicted on taxpayers and the tax system, Congress must provide the IRS statutory authority to establish minimum competency standards for paid federal tax return preparers. Minimum competency standards are an important and necessary taxpayer protection measure because such standards would increase the accuracy of tax returns and protect taxpayers from unqualified return preparers. Such an oversight program would also provide taxpayers with more certainty that individuals who hold themselves out as return preparers actually have the basic skills necessary to prepare the tax return. Enacting appropriate legislation is common sense to ensure accuracy in tax return filings and protect U.S. taxpayers.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Conduct a robust outreach and education campaign on how to report suspected violations of Circular 230, with the targeted recipients of these outreach and education efforts to include taxpayers, tax professionals, and IRS employees.
2. Strengthen its taxpayer awareness campaign immediately before and during the filing season to ensure that taxpayers understand what to expect from their return preparer (*e.g.*, sign return, provide PTIN, furnish copy of return) and where to report preparers who violate the requirements.
3. Prioritize the assessment and collection of the IRC § 6695 return preparer penalties, especially the IRC § 6695(b) penalty for failure to sign the return and the IRC § 6695(c) penalty for failure to furnish a PTIN.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend title 31, section 330 of the U.S. Code to authorize the Secretary to establish minimum standards for federal tax return preparers.

RESPONSIBLE OFFICIALS

Amalia Colbert, Commissioner, Small Business/Self-Employed Division

Kimberly Rogers, Director, Return Preparer Office

Timothy McCormally, Acting Director, Office of Professional Responsibility

Kenneth Corbin, Commissioner, Wage and Investment Division

IRS COMMENTS

The IRS agrees that statutory authority to implement and enforce minimum competency standards for return preparers would yield new and important opportunities to serve taxpayers and safeguard the tax system. As GAO, IRS and TAS have observed since the *Loving v. IRS* decision, the Office of Professional Responsibility (OPR) currently only has jurisdiction over individuals who represent taxpayers before the IRS (*i.e.*, attorneys, CPAs, enrolled agents, or participants in the IRS's Annual Filing Season Program). Thus, OPR cannot prevent incompetent or unscrupulous return preparers from preparing tax returns unless they engage in representational activities.

That said, the IRS has used its extant return preparer authority to ensure return preparers apply for and use Preparer Tax Identification Numbers (PTINs) on returns they prepare for compensation and sign the returns they prepare. The Return Preparer Office's (RPO) mission is to improve taxpayer compliance by ensuring minimum standards for tax professionals and providing them with ongoing support. Moreover, OPR addresses whether tax practitioners are fit to practice before the IRS by investigating allegations of misconduct (including violating the Internal Revenue Code's return preparer provisions), making disciplinary determinations, and promoting awareness of the requirements of Treasury Circular 230. Under *Loving*, however, these efforts cannot extend to uncredentialed preparers.

To coordinate the IRS response to non-compliance concerning return preparation, the IRS established the IRS Servicewide Preparer Strategy (SWPS) in November 2020.⁵⁴ The SWPS identified six strategic goals related to encouraging preparer compliance.⁵⁵ In April 2022 the IRS provided TAS with the SWPS Communication Plan in response to the 2018 TAS MSP recommendation #7-3.⁵⁶ The SWPS Communication Plan outlines the IRS's intent to facilitate return preparer compliance through communication with return preparers and industry groups as well as taxpayers, using a variety of communication channels designed to reach these audiences where they are, such as [IRS.gov](https://www.irs.gov), news releases, social media, filing season outreach, and paid ads (if funding is available). Thus, Stakeholder Liaison has engaged in filing season awareness campaigns targeted to business taxpayers through various industry organizations and individual taxpayers through community-based organizations. New for filing season 2023 are two related publications — P4717, *Help your preparer get your tax return right*, and P5610, *How to Report Suspected Abusive Tax Promotions or Preparers*.

The OPR's Outreach Communications Plan contemplates extensive outreach and education efforts to external and internal stakeholders on Circular 230 standards, due diligence and other obligations of tax practitioners, and when and how effective referrals to OPR and RPO should be made (*e.g.*, IRS enforcement personnel are required to make referrals to OPR when certain penalties are imposed).

TAXPAYER ADVOCATE SERVICE COMMENTS

Minimum competency standards for paid return preparers are an important taxpayer protection measure. The absence of such standards leaves taxpayers, especially low-income taxpayers, vulnerable to inadvertent errors that could cause them to file inaccurate tax returns and potentially face IRS

enforcement action. It also leaves some taxpayers open to unscrupulous preparers, many of whom the IRS could eliminate if it professionalized the return preparation industry.

The IRS, including the RPO and OPR, currently has limited jurisdiction to protect taxpayers from the harm caused by non-credentialed paid return preparers. Authorizing IRS oversight would enable RPO to ensure that this category of return preparers has the training they need to prepare accurate federal income tax returns. It would bring these return preparers under the purview of Circular 230, and OPR would be able to enforce ethical rules and standards of conduct against them.

To protect taxpayers both before and after it receives return preparer oversight authority, the IRS must ensure that taxpayers are well informed about return preparer requirements and the differences between the various return preparer credentials. The IRS must provide information to taxpayers before and during the filing season each year on what they have the right to expect from their return preparer and where to report preparers who violate the requirements. Such taxpayer awareness is especially crucial to protect them against the harm caused by ghost preparers. In addition to educating taxpayers, the IRS should leverage its relationship with the software industry to assist in identifying ghost preparers.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Conduct a robust outreach and education campaign on how to report suspected violations of Circular 230, with the targeted recipients of these outreach and education efforts to include taxpayers, tax professionals, and IRS employees.
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3. Prioritize the assessment and collection of the IRC § 6695 return preparer penalties, especially the IRC § 6695(b) penalty for failure to sign the return and the IRC § 6695(c) penalty for failure to furnish a PTIN.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend title 31, section 330 of the U.S. Code to authorize the Secretary to establish minimum standards for federal tax return preparers.

Endnotes

- 1 IRS, Compliance Data Warehouse (CDW) Individual Returns Transaction File Table (IRTF) Tax Year (TY) 2021 (Nov. 2022).
- 2 IRS, CDW, IRTF TY 2021, Return Review Program (RPP) Preparer Tax Identification Number Table (PTIN) (Nov. 2022).
- 3 IRS, CDW, Business Return Transaction File TY 2021 (Nov. 2022). Form 990 series preparer indicator or preparer tax identification numbers were not available for TY 2021.
- 4 IRS, Pub. 5166, VITA/TCE Volunteer Quality Site Requirements 5 (Oct. 2022); IRS, Pub. 5101, Intake/Interview & Quality Review Training (Aug. 2022); IRS, Pub. 4961, VITA/TCE Volunteer Standards of Conduct – Ethics Training, 2022 Returns (Oct. 2022).
- 5 In CY 2021, of the 783,794 professionals with PTINs, more than 416,039 did not possess a credential. IRS response to TAS information request (Sept. 30, 2022).

Most Serious Problem #8: Return Preparer Oversight

- 6 For a detailed discussion of the participants in the tax preparation industry, see Government Accountability Office (GAO), GAO-19-269, *Tax Refund Products: Product Mix Has Evolved and IRS Should Improve Data Quality* 4-9 (2019).
- 7 See, e.g., National Taxpayer Advocate 2002 Annual Report to Congress 216-230 (Legislative Recommendation: *Regulation of Federal Tax Return Preparers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc2002_section_two.pdf.
- 8 See, e.g., National Taxpayer Advocate 2013 Annual Report to Congress 61-74 (Most Serious Problem: *Regulation of Return Preparers: Taxpayers and Tax Administration Remain Vulnerable to Incompetent and Unscrupulous Return Preparers While the IRS Is Enjoined From Continuing its Efforts to Effectively Regulate Unenrolled Preparers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2013-ARC_VOL-1_S1-MSP-5.pdf; National Taxpayer Advocate 2009 Annual Report to Congress 41-69 (Most Serious Problem: *The IRS Lacks a Servicewide Return Preparer Strategy*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/1_09_tas_arc_vol_1_preface_toc_msp.pdf; National Taxpayer Advocate 2002 Annual Report to Congress 216-230 (Legislative Recommendation: *Regulation of Federal Tax Return Preparers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc2002_section_two.pdf; *Fraud in Income Tax Return Preparation: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 109th Cong. 6-19 (2005) (statement of Nina E. Olson, National Taxpayer Advocate).
- 9 For more details, see National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 5-8 (Legislative Recommendation: *Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers*).
- 10 See IRS, Pub. 4832, *Return Preparer Review* 33 (Dec. 2009).
- 11 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014).
- 12 See, e.g., Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals* 83-86 (Mar. 2022).
- 13 Taxpayer Protection and Preparer Proficiency Act of 2021, H.R. 4184, 117th Cong. (2021).
- 14 A PTIN is an identification number that anyone who is paid to prepare or assist in preparing federal tax returns or claims for refund must use on returns or claims for refund. IRS, PTIN Requirements for Tax Return Preparers, <https://www.irs.gov/tax-professionals/ptin-requirements-for-tax-return-preparers> (last visited Dec. 1, 2022).
- 15 31 C.F.R. Part 10; IRS, General Requirements for the Annual Filing Season Program Record of Completion, <https://www.irs.gov/tax-professionals/general-requirements-for-the-annual-filing-season-program-record-of-completion> (last visited Dec. 1, 2022); Rev. Proc. 2014-42, 2014-29 I.R.B. 192.
- 16 Rev. Proc. 2014-42, 2014-29 I.R.B. 192.
- 17 IRS, Directory of Federal Tax Return Preparers with Credentials and Select Qualifications, <https://irs.treasury.gov/rpo/rpo.jsf> (last visited Dec. 1, 2022).
- 18 IRS response to TAS information request (Sept. 30, 2022).
- 19 *Registered Tax Preparers*, STATE OF CAL. FRANCHISE TAX BD., <https://www.ftb.ca.gov/tax-pros/california-tax-education-council.html> (last visited Dec. 1, 2022); *Paid Preparers and Facilitators*, CONN. STATE DEPT OF REVENUE SERVS., <https://portal.ct.gov/DRS/TSC/Paid-Preparers/Preparers> (last visited Dec. 1, 2022); *Guidance: Income Tax Return Preparers*, IOWA DEPT OF REVENUE, <https://tax.iowa.gov/guidance-tax-return-preparers> (last visited Dec. 1, 2022); *Registration – Individual Tax Preparers*, MD. DEPT OF LABOR, <https://www.dlr.state.md.us/license/taxprep/taxprepic.shtml> (last visited Dec. 1, 2022); *Tax Preparer and Facilitator Registration and Continuing Education*, N.Y. STATE DEPT OF TAXATION AND FIN., <https://www.tax.ny.gov/tp/reg/tpreg.htm> (last visited Dec. 1, 2022); *Exam Requirements*, OR. BD. OF TAX PRACTITIONERS, <https://www.oregon.gov/obtp/Pages/ExamRequirements.aspx> (last visited Dec. 1, 2022).
- 20 IRS, CDW, PTIN, IRTF (Nov. 2022).
- 21 For a summary of the various state requirements, see *Tax Preparer Regulations by State*, SURGENT, <https://www.theincometaxschool.com/preparer-regulations-by-state/> (last visited Dec. 1, 2022).
- 22 For an explanation of the various credentials, see IRS, *Understanding Tax Return Preparer Credentials and Qualifications*, <https://www.irs.gov/tax-professionals/understanding-tax-return-preparer-credentials-and-qualifications> (last visited Dec. 1, 2022).
- 23 IRS response to TAS information request (Sept. 30, 2022).
- 24 IRS, *Enrolled Agent Information*, <https://www.irs.gov/tax-professionals/enrolled-agents/enrolled-agent-information> (last visited Dec. 1, 2022).
- 25 IRS, *Enrolled Retirement Plan Agent (ERPA) Program Changes*, <https://www.irs.gov/retirement-plans/enrolled-retirement-plan-agent-erpa-program-changes> (last visited Dec. 1, 2022).
- 26 IRS, *Enrolled Actuary Information*, <https://www.irs.gov/tax-professionals/enrolled-actuaries/enrolled-actuary-information> (last visited Dec. 1, 2022).
- 27 IRS, Pub. 5166, *IRS Volunteer VITA/TCE Volunteer Quality Site Requirements* 4-6 (Oct. 2022); IRS, Pub. 5101, *Intake/Interview & Quality Review Training* (Aug. 2022); IRS, Pub. 4961, *VITA/TCE Volunteer Standards of Conduct – Ethics Training*, 2022 Returns (Oct. 2022).
- 28 Michael Best, *Public Views on Paid Tax Preparation 2017: Strong Public Support Continues for New Consumer Protections to Prevent Errors and Fraud*, CONSUMER FED'N OF AM. 3 (Mar. 2017).
- 29 See, e.g., IRS, Tax Tip 2021-14, *Tips to Help People Choose a Reputable Tax Preparer* (Feb. 5, 2021).
- 30 *United States v. Boyle*, 469 U.S. 241 (1985); IRC § 6664(c)(1); Treas. Reg. § 1.6664-4.
- 31 National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, at 1-26 (Research Study: *Low Income Taxpayer Clinic Program: A Look at Those Eligible to Seek Help from Clinics*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2014-ARC_VOL-2_1-LITC-Program-508.pdf.
- 32 IRS, CDW, IRTF TY 2018-2021, PTIN, and Audit Information Management System Table (through Sept. 29, 2022).
- 33 *Id.*

Most Serious Problem #8: Return Preparer Oversight

- 34 For a more detailed discussion of the findings of these studies, see National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 5-8 (Legislative Recommendation: *Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers*).
- 35 GAO, GAO-06-563T, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors* (2006). Of the 19 returns prepared during the visits, 17 computed the wrong tax liability.
- 36 TIGTA, Ref. No. 2008-40-171, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors* (2008). Of the 28 returns prepared by non-credentialed preparers visited, 61 percent were prepared incorrectly.
- 37 Statement of Jamie Woodward, Acting Comm'r, N.Y. Dep't of Taxation and Fin., before IRS Tax Return Preparer Review Pub. Forum (Sept. 2, 2009). In the 2008 and 2009 visits, they found "an epidemic of unethical and criminal behavior," and they made over 20 arrests and secured 13 convictions.
- 38 IRS, Pub. 5162, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* 24-26 (Aug. 2014).
- 39 IRS, CDW, IRTF TY 2018-2021, PTIN, and Individual Master File Transaction History table (through Sept. 29, 2022).
- 40 IRS, CDW, IRTF, PTIN. A sample of one million TY 2020 individual income tax returns prepared by credentialed and non-credentialed preparers was used to perform propensity score matching to protect against self-selection bias since a taxpayer could intentionally select a non-credentialed preparer. Preparers who had an AFSP effective date in CY 2021 were placed in the credentialed category. A propensity score was calculated based on the following variables: adjusted gross income quartiles, total positive income (TPI) class, head of household and married filing joint filing statuses, an EITC indicator, a Schedules C or F indicator, and an age over 50 indicator. These characteristics were used to create a matched sample of returns prepared by credentialed and non-credentialed preparers. DIF deciles of TY 2020 returns were then calculated for each TPI class, and each return was placed in its respective DIF decile within the credentialed and non-credentialed preparer groups.
- 41 31 C.F.R. § 10.3.
- 42 IRS, AFSP, <https://www.irs.gov/tax-professionals/annual-filing-season-program> (last visited Dec. 1, 2022).
- 43 Rev. Proc. 2014-42, 2014-29 I.R.B. 192.
- 44 IRS, Understanding Tax Return Preparer Credentials and Qualifications, <https://www.irs.gov/tax-professionals/understanding-tax-return-preparer-credentials-and-qualifications> (last visited Dec. 1, 2022).
- 45 Before the IRS was enjoined from administering the return preparer program in *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014), registered tax return preparers were subject to Circular 230. 31 C.F.R. § 10.8(c).
- 46 31 C.F.R. Part 10.
- 47 During the last three fiscal years, the number of cases in OPR's inventory is significantly lower than immediately preceding years. In fiscal year (FY) 2022, OPR had 54 cases in its inventory; in FY 2021, 56 cases; in FY 2020, 47; in FY 2019, 171; and in FY 2018, 227. IRS response to TAS information request (Oct. 13, 2022).
- 48 31 C.F.R. Part 10; IRC §§ 6694, 6695, 6700, 6701, 6713, 7216.
- 49 See, e.g., IRS, Tax Scams/Consumer Alerts, <https://www.irs.gov/newsroom/tax-scams-consumer-alerts> (last visited Dec. 1, 2022); IRS, IRS Criminal Investigation Issues 10 Tips to Avoid Tax Season Fraud (Jan. 19, 2022), <https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-issues-10-tips-to-avoid-tax-season-fraud>.
- 50 Complaints are filed on IRS Form 14157, Return Preparer Complaint, <https://www.irs.gov/pub/irs-pdf/f14157.pdf>.
- 51 See TIGTA, Ref. No. 2020-30-027, *Tax Return Preparer With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized* (2020), <https://www.tigta.gov/reports/audit/tax-return-preparers-delinquent-tax-returns-tax-liabilities-and-preparer-penalties>.
- 52 IRC § 7803(a)(3)(I).
- 53 See IRS Notice 2011-6, 2011-3 I.R.B. 315.
- 54 IRS, Deputy Commissioner Services and Enforcement, Approved IRS Servicewide Preparer Strategy (Nov. 2020).
- 55 Specifically, the six strategic goals are:
- Establish governance, improve leverage and centralize compliance activities.
 - Reduce opportunities for preparer misconduct and identify non-compliance.
 - Make a multi-year commitment to preparer related research.
 - Continue improvements in information technology and information sharing.
 - Coordinate Servicewide to enhance communication and coordination to ensure our employees are engaged and understand the overall SWPS.
 - Communicate key messages with external partners and stakeholder groups that advance the goals of SWPS to improve preparer conduct and access to information.
- 56 IRS, Communication Plan: Servicewide Preparer Strategy (Apr. 2022).