



May 11, 2021

The Honorable Ron Wyden  
Chairman  
U.S. Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Richard Neal  
Chairman  
U.S. House Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

The Honorable Mike Crapo  
Ranking Member  
U.S. Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Kevin Brady  
Ranking Member  
U.S. Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

**Re: American Families Plan Proposal - IRS Regulation of Paid Tax Return Preparers**

Dear Chairmen Wyden and Neal, and Ranking Members Crapo and Brady:

The American Institute of CPAs (AICPA) applauds the proposal in the American Families Plan (AFP) that provides the Department of the Treasury (“Treasury”) the authority to regulate paid tax return preparers. Ensuring that tax preparers are competent and ethical, and that the Internal Revenue Service (IRS) has the tools it needs to conduct appropriate oversight, is critical to maintaining taxpayer confidence in our tax system and protecting the interests of the American taxpayer.

The AICPA is a steadfast supporter of the goals of enhancing compliance and elevating ethical conduct for all tax preparers. For these reasons, the AFP proposal is best captured by S. 1192, Taxpayer Protection and Preparer Proficiency Act of 2019 (Sen. Wyden, 116<sup>th</sup>) (“Wyden bill”), with two additional elements to achieve balanced regulation. Specifically, the key elements needed in a plan to regulate tax preparers are:

- Reinstatement of the Registered Tax Return Preparer Program
- Limitation on IRS’s Authority to Require a PTIN
- IRS Authorization to Revoke PTINs
- GAO Study on IRS’s Exchange of Information with State Taxing Authorities
- Congressional Intent with Respect to Registered Tax Return Preparer Program (*not explicitly included in S. 1192*)
- Mitigation of Marketplace Confusion (*not explicitly included in S. 1192*)

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### **Reinstate the Registered Tax Return Preparer Program under Title 31 of the U.S. Code**

The AICPA supports the reinstatement of the 2011 Registered Tax Return Preparer (RTRP) program to regulate tax return preparer activities, with an exception for CPAs, enrolled agents and attorneys. Furthermore, Section 330 of Title 31, United States Code (“Title 31”) should be amended to include the RTRP program.

Under current law (Title 31) and regulations (Treasury Department Circular No. 230 (“Circular 230”)), Treasury can only regulate the representation of taxpayers by attorneys, CPAs and enrolled agents before Treasury and the IRS. Reinstating the RTRP program would allow the IRS to establish a minimum competency and basic proficiency of the U.S. tax law in tax return preparation and ethics of all tax return preparers. The RTRP program should require:

- A one-time basic individual tax competency exam,
- 15 hours of annual continuing education,
- Compliance and background checks,
- Compliance with advertising restrictions, and
- Compliance with the ethical standards of Circular 230.

CPAs, enrolled agents and attorneys (collectively known as Circular 230 legacy preparers) are licensed by state boards of accountancy, awarded credentials by the IRS, or licensed by state courts, respectively. The Circular 230 legacy preparers must also comply with ethical requirements and yearly continuing education that vastly surpasses the minimum RTRP program requirements and, therefore, should be excluded from the program.

### **Limitation on IRS’s Authority to Require a PTIN**

The IRS currently requires all “preparers” to obtain a preparer tax identification number (PTIN). Under Circular 230, § 10.8, “Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund must have a preparer tax identification number...” The PTIN, which is renewed annually, is intended to allow the IRS to better identify tax return preparers, perform quality control, centralize information, and effectively administer the rules relating to tax return preparers. However, when individuals are supervised by Circular 230 legacy preparers, and the firms are owned by Circular 230 legacy preparers, who sign the return and are ultimately responsible for its accuracy, these supervised individuals should not be required to obtain a PTIN. We believe such an exclusion from the current PTIN system would recognize the inherent regulatory regime within which CPAs and other Circular 230 legacy preparers already practice, as well as the fact that CPA firms must stand, as a matter of licensure, behind the work done by the members and employees of their firms.

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We therefore support the provision in the Wyden bill that excludes non-signers from the requirement to obtain a PTIN if:

- The non-signers are supervised by an attorney, CPA, enrolled agent, enrolled retirement plan agent, or enrolled actuary, working at a firm owned by a Circular 230 legacy preparer, and authorized to practice before the IRS under Circular 230 §10.3(a) through (e); and
- A supervising attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary signs the tax returns or claims for refund prepared by the individual.

### **IRS Authorization to Revoke PTINs**

Currently, the IRS does not possess the authority to rescind a PTIN from a tax return preparer who has been subjected to (1) preparer penalty provisions under the Internal Revenue Code, or (2) discipline under Circular 230. The IRS must rely on the Department of Justice and the courts to enjoin an individual from preparing tax returns, which can be an expensive and a slow process.

The AICPA supports the provision in the Wyden bill that authorizes the IRS to revoke a PTIN for failure to comply with regulations under either the Internal Revenue Code or Title 31, subject to appropriate due process. The AICPA recognizes that this provision is essential to allow the IRS to quickly and efficiently stop incompetent and unscrupulous preparers from continuing to file inaccurate or fraudulent tax returns.

### **GAO Study on IRS's Exchange of Information with State Taxing Authorities**

The AICPA supports the provision in the Wyden bill directing a Government Accountability Office (GAO) study on the benefits of increasing the exchange of information relating to return preparers between the IRS and state taxing authorities. We believe the exchange of tax preparer data (particularly as it relates to incompetent or fraudulent preparers) would improve tax administration by reducing duplicate government resource expenditures and increasing taxpayer compliance. An information exchange process would also assist states in identifying incompetent or unscrupulous preparers whose PTINs have been revoked by the IRS.

Congress has previously recognized the importance of information sharing with state agencies under section 6103(d) and should direct GAO to study the benefits of expanding this authority to allow the sharing of tax return preparer information with state taxing authorities.

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**Clarification of Congressional Intent with Respect to Registered Tax Return Preparer Program** *(not explicitly included in S. 1192)*

The AICPA supports Congress encouraging Treasury and the IRS to reinstate the RTRP program. We agree with the National Taxpayer Advocate that the return preparer oversight program was well planned after extensive consultation with stakeholder groups.<sup>1</sup> The one-time “entrance” examination to ensure basic Form 1040 competency in individual income tax return preparation and the requirement for unenrolled preparers to satisfy 15 hours of annual continuing education were both appropriate and sufficient to protect taxpayers from incompetence and misconduct, while not raising the bar so high that there are an insufficient number of preparers to assist taxpayers wanting and needing such assistance. The stakeholder feedback helped to appropriately steer the focus of the RTRP program to the unlicensed preparers. Absent this clarification, IRS would be given a broad authority that could ignore years of study that resulted in enhanced taxpayer compliance, elevated ethical conduct by tax return preparers, and measurable protections for the taxpaying public.

**Mitigation of Marketplace Confusion** *(not explicitly included in S. 1192)*

The IRS does not and has not endorsed any particular tax return preparer. However, there have been instances in which unregulated tax preparers have used misleading marketing tactics to imply they are endorsed by the agency. As a result, some taxpayers are confused by the different qualifications of tax preparers and the varying practice rights they possess.

To protect taxpayers, mitigate marketplace confusion, and ensure truth in advertising, it is important that unlicensed PTIN holders using any paid advertising involving print, television, radio, or other medium – *in which the individual represents themselves as a registered tax return preparer* – should display or broadcast a statement directing the taxpaying public to the IRS website where the differences between the various types of preparers (e.g., qualifications) are explained, and informing the public that the IRS does not endorse any particular tax return preparer.<sup>2</sup> It is important that Congress explicitly clarify this taxpayer protection as a component of the authority being provided.

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We appreciate the need to address incompetent and unscrupulous tax return preparers. Taxpayers need and deserve enhanced compliance and elevated ethical conduct from their preparers. The

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<sup>1</sup> National Taxpayer Advocate, “[Fiscal Year 2015 Objectives Report to Congress](#),” Volume 1, Area of Focus: Tax Return Preparer Standards, page 71, June 30, 2014.

<sup>2</sup> Prior to 2013, the IRS had subjected unlicensed tax return preparers to the guidance in IRS Notice 2011-45, 2011-25 IRB 886, which aims to mitigate marketplace confusion and ensure truth in advertising.

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protections in the Wyden bill, with the two additional key elements described above, would accomplish those goals.

The AICPA is the world's largest member association representing the CPA profession, with more than 431,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please feel free to contact Melanie Lauridsen, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9235 or [Melanie.Lauridsen@aicpa-cima.com](mailto:Melanie.Lauridsen@aicpa-cima.com); Lauren Pfingstag, Director – AICPA Congressional and Political Affairs, at (407) 257-0607 or [Lauren.Pfingstag@aicpa-cima.com](mailto:Lauren.Pfingstag@aicpa-cima.com); or me at (612) 397-3071 or [Chris.Hesse@CLAconnect.com](mailto:Chris.Hesse@CLAconnect.com).

Sincerely,



Barry C. Melancon, CPA, CGMA  
President and CEO, AICPA



Christopher W. Hesse, CPA  
Chair, AICPA Tax Executive Committee

cc: Members of the Senate Committee on Finance  
Members of the House Committee on Ways and Means  
Mr. Thomas Barthold, Chief of Staff, Joint Committee on Taxation  
The Honorable Charles P. Rettig, Commissioner, Internal Revenue Service  
Mr. Mark Mazur, Acting Assistant Secretary for Tax Policy, Department of the Treasury