

Legislative Recommendation #4**Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers and Revoke the Identification Numbers of Sanctioned Preparers****SUMMARY**

- *Problem:* The majority of paid tax return preparers are non-credentialed. Some have no training or experience. Taxpayers are harmed when incompetent tax return preparers make errors that cause them to pay too much tax, fail to claim tax benefits for which they are eligible, or subject them to IRS tax adjustments and penalties for understating their tax. The public Treasury is harmed when incompetent or unethical preparers claim tax benefits for which taxpayers are not eligible, leading to billions of dollars in improper payments.
- *Solution:* Require paid non-credentialed tax return preparers to pass a basic competency test, meet specified standards of conduct, and take annual continuing education courses about federal tax laws and procedures, and authorize the IRS to revoke the identification numbers of sanctioned tax return preparers.

PRESENT LAW

Federal law imposes no competency or licensing requirements on paid tax return preparers.

Credentialed individuals who may prepare tax returns, including attorneys, certified public accountants (CPAs), and enrolled agents (EAs), are generally required to pass competency tests and take continuing education courses (including an ethics component). Volunteers who prepare tax returns as part of the Volunteer Income Tax Assistance and Tax Counseling for the Elderly programs also must pass competency tests.

However, the vast majority of paid preparers are non-credentialed and are not required to pass competency tests, take any courses in tax return preparation, or follow prescribed standards of conduct.

IRC § 6109(a)(4) requires all tax return preparers, regardless of credential, to include an identifying number on tax returns they prepare. Treasury Regulation § 1.6109-2 requires preparers to apply for a Preparer Tax Identification Number (PTIN) from the IRS and include it on prepared returns.

REASONS FOR CHANGE

In recent years, the IRS has received over 160 million individual income tax returns annually. Paid tax return preparers prepare the majority of these returns. Both taxpayers and the tax system depend heavily on the ability of preparers to prepare accurate returns. Yet numerous studies have found that non-credentialed tax return preparers routinely prepare inaccurate returns, which harms taxpayers and the public fisc.

To protect the public, federal and state laws generally require lawyers, CPAs, doctors, securities dealers, financial planners, actuaries, appraisers, contractors, motor vehicle operators, and even barbers and beauticians to obtain licenses or certifications and, in most cases, to pass competency tests. Taxpayers and the tax system would benefit from requiring tax return preparers to pass minimum competency tests.

The relationship between preparer credentials and overclaims in the Earned Income Tax Credit (EITC) program provides a stark illustration of the need to strengthen preparer standards. The EITC is one of the federal government’s largest means-tested anti-poverty programs. It enjoys broad bipartisan support, but it also is plagued by a high improper payments rate. In fiscal year 2023, the IRS estimates the amount of improper payments was \$21.9 billion, or 33.5 percent of dollars paid out.¹ IRS data suggests that a significant portion of improper payments was attributable to tax returns prepared by non-credentialed preparers. Among returns claiming the EITC prepared by paid tax return preparers in tax year 2022, non-credentialed preparers prepared 82 percent, and the returns they prepared accounted for 96 percent of the total dollar amount of EITC audit adjustments made on prepared returns.² Requiring that tax return preparers demonstrate competence and obtain continuing education is arguably the simplest and most effective step Congress can take to improve return accuracy and reduce improper payments.

Previous studies conducted by the Government Accountability Office, the Treasury Inspector General for Tax Administration (TIGTA), and others illustrate the extent – and adverse consequences – of inaccurate return preparation by unenrolled tax return preparers.³

In 2009, the IRS Commissioner decided to implement minimum standards for paid return preparers. Section 330 of Title 31 of the U.S. Code authorizes the Treasury Department to regulate “practice” before the IRS, and the Commissioner took the position that tax return preparation falls within the definition of “practice.” On that basis, the IRS initiated extensive hearings and discussions with stakeholder groups to receive comments and develop a program under which all parties believed they could operate.⁴ The IRS, together with the Treasury Department, implemented the program in 2011. However, a federal court later rejected the IRS’s position that it had the legal authority to regulate tax return preparation, holding that “mere” tax return preparation did not constitute “practice” before the IRS.⁵ As a result, the program was terminated.

In response, the IRS created a voluntary “Annual Filing Season Program.” Non-credentialed preparers who participate must meet specific requirements, including taking 18 hours of continuing education each year, which includes an examined tax refresher course. If they meet the requirements, the IRS provides them with a “Record of Completion” they presumably can use in their marketing to attract potential clients.⁶ However, this program is less rigorous than the one the IRS implemented in 2011, and most non-credentialed preparers do not participate. This voluntary program does not satisfy the objectives of a comprehensive regime.

Since the 2011 program was invalidated, the Obama, Trump, and Biden administrations have each previously asked Congress to pass legislation giving the Treasury Department the legal authority to establish and enforce minimum standards. Excerpts from their proposals include the following:

The Obama administration: “Incompetent and dishonest tax return preparers increase collection costs, reduce revenues, disadvantage taxpayers by potentially subjecting them to penalties and interest as a result of incorrect

1 Government Accountability Office (GAO), GAO-24-106927, *Improper Payments: Information on Agencies’ Fiscal Year 2023 Estimates* 3, 5 (2024), <https://www.gao.gov/products/gao-24-106927>.

2 IRS, Compliance Data Warehouse, Individual Returns Transaction File, Return Preparers and Providers PTIN Database and Audit Information Management System – Closed Cases Database) (Jan. 25, 2024).

3 See GAO, GAO-14-467T, *Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors* (2014), <https://www.gao.gov/products/gao-14-467t>; GAO, GAO-06-563T, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors* (2006), <https://www.gao.gov/products/gao-06-563t>; TIGTA, Ref. No. 2008-40-171, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors* (2008); Jamie Woodward, Acting Comm’r, N.Y. Dep’t of Tax’n and Fin., Remarks at the IRS Tax Return Preparer Review Public Forum (Sept. 2, 2009); see also Tom Herman, *New York Sting Nabs Tax Preparers*, WALL ST. J., Nov. 26, 2008, <https://www.wsj.com/articles/SB122765734841458181>.

4 See IRS, Pub. 4832, Return Preparer Review (Dec. 2009), <https://www.irs.gov/pub/irs-pdf/p4832.pdf>.

5 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff’d*, 742 F.3d 1013 (D.C. Cir. 2014).

6 Rev. Proc. 2014-42, 2014-29 I.R.B. 192.

returns, and undermine confidence in the tax system. . . . [Our] proposal would explicitly provide that the Secretary has the authority to regulate all paid tax return preparers.”⁷

The Trump administration: “The Administration continues to hold that improved regulation of preparers is an effective means to improve voluntary compliance. Thus, the Administration requests that the IRS be granted the authority to require minimum standards for all 400,000 tax preparers without credentials.”⁸

The Biden administration: “The current lack of authority to provide oversight on paid tax return preparers results in greater non-compliance when taxpayers who use incompetent preparers or preparers who engage in unscrupulous conduct become subject to penalties, interest, or avoidable costs of litigation due to the poor-quality advice they receive. The lack of authority affects revenues to the IRS when the resulting noncompliance is not mitigated during return processing. Regulation of paid tax return preparers, in conjunction with diligent enforcement, will help promote high quality services from paid tax return preparers, will improve voluntary compliance, and will foster taxpayer confidence in the fairness of the tax system.”⁹

In addition to the longstanding reasons for establishing minimum preparer standards, Initiative 1.4 of the IRS Inflation Reduction Act Strategic Operating Plan provides a new reason.¹⁰ The IRS is continuing to expand the capabilities of the online Tax Pro Account program to give preparers access to an increasing amount of confidential taxpayer information.¹¹ While there are considerable benefits to this plan, there are also significant security risks, including identity theft and other fraud. Allowing non-credentialed tax return preparers to access more confidential tax return information would increase these risks.

Some have argued that requiring preparers to pass a competency test and take annual continuing education courses would address competence but would not ensure preparers conduct themselves ethically. The National Taxpayer Advocate agrees that tax law competency and ethical conduct are distinct issues. However, we believe preparer standards would raise both competency and ethical conduct levels. A preparer who invests in learning enough about tax return preparation to pass a competency test and takes annual continuing education courses would demonstrate a commitment to return preparation as a profession. The preparer would be a vested partner in the tax system and would have more to lose if found to have engaged in misconduct, just like attorneys, CPAs, EAs, and other credentialed preparers. In addition, if tax return preparation is characterized as “practice” before the IRS under 31 U.S.C. § 330, the Office of Professional Responsibility would have oversight authority over preparers and could impose sanctions in cases of unethical conduct.¹²

One related issue requires attention. Under current law, every preparer must obtain a PTIN from the IRS to prepare tax returns, but the IRS does not have the authority to revoke the PTINs of preparers who engage in improper or illegal conduct. By contrast, the IRS may refuse to issue or revoke the electronic filer identification numbers (EFINs) of preparers who fail to pass suitability checks, fail subsequent reviews, or are prohibited by

7 Dep’t of the Treasury, General Explanations of the Administration’s Fiscal Year 2015 Revenue Proposals 244 (Mar. 2014), <https://home.treasury.gov/system/files/131/General-Explanations-FY2015.pdf>.

8 Dep’t of the Treasury, FY 2019 Budget in Brief 7, <https://home.treasury.gov/system/files/266/16.-IRS-FY-2019-BIB-FY2019.pdf>.

9 Dep’t of the Treasury, General Explanations of the Administration’s Fiscal Year 2025 Revenue Proposals 206 (Mar. 2024), <https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf>.

10 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 26 (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

11 IRS, Pub. 3744-B, 2024 Inflation Reduction Act Strategic Operating Plan Annual Update 4 (Apr. 2024), <https://www.irs.gov/pub/irs-pdf/p3744b.pdf>; IRS, Pub. 3744-A, 2024 Inflation Reduction Act Strategic Operating Plan Annual Update Supplement 15 (Apr. 2024), <https://www.irs.gov/pub/irs-pdf/p3744a.pdf>.

12 For a general overview of the rules of practice before the IRS, see IRS, Pub. 947, Practice Before the IRS and Power of Attorney (Feb. 2018), <https://www.irs.gov/pub/irs-pdf/p947.pdf>.

federal court injunction or another federal or state action from participating in IRS e-file.¹³ Congress should allow PTIN revocation under similar circumstances and with the proper due process protections.¹⁴

In sum, IRS data and other compliance studies have consistently found that tax returns prepared by non-credentialed preparers are often inaccurate. Minimum standards would directly improve preparer competency levels and are likely to raise ethical norms. In addition, giving the IRS the authority to revoke the PTINs of substantially noncompliant preparers would provide the IRS with another tool to encourage compliant behavior in the profession.

RECOMMENDATIONS

- Amend 31 U.S.C. § 330 to authorize the Secretary to establish minimum standards for paid federal tax return preparers.¹⁵
- Amend IRC § 6109 to authorize the Secretary to revoke PTINs concurrently with the assessment of sanctions for violations of established minimum standards for paid federal tax return preparers.¹⁶

13 IRS, Pub. 3112, IRS E-File Application & Participation (Oct. 2024), <https://www.irs.gov/pub/irs-pdf/p3112.pdf>; Rev. Proc. 2007-40, 2007-26 I.R.B. 1488.

14 See, e.g., *Zirin Tax Co. Inc. v. United States*, No. 24-cv-01511, 2024 WL 2882609 (E.D.N.Y. June 7, 2024) (discussing the Fifth Amendment due process concerns caused by the government suspending the plaintiff's EFIN).

15 For legislative language generally consistent with this recommendation, see, e.g., Tax Refund Protection Act, S. 1209 & H.R. 2702, 118th Cong. § 2 (2023).

16 For legislative language generally consistent with this recommendation, see, e.g., System Transparency and Accountability for the IRS Act, H.R. 7341, 117th Cong. § 3(e)(2) (2022).