

**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS
STATEMENT PRESENTED TO**

**INTERNAL REVENUE SERVICE OVERSIGHT BOARD
PUBLIC MEETING**

February 19, 2008

The American Institute of Certified Public Accountants thanks the IRS Oversight Board for the opportunity to appear before you today. I am Jeffrey R. Hoops, Chair of the AICPA's Tax Executive Committee; and a tax partner with Ernst & Young, LLP, New York, New York. My testimony today is based on my role at the AICPA.

The AICPA is the national, professional organization of certified public accountants comprised of approximately 350,000 members. Our members advise clients 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, small and medium-sized businesses, as well as America's largest businesses. It is from this broad perspective that we offer our comments today.

Today's meeting consists of three panels which have been charged with addressing certain critical issues impacting on tax administration and the American taxpaying public. I am pleased to testify today on the panel addressing how our members' organizations attract talent, and develop and retain key employees; including our perspective for building future leaders; this topic is addressed in the *first section* of this written statement.

Sections two and three of this written statement provide the AICPA's views on the topics assigned to the other two panels appearing today before the IRS Oversight Board. Accordingly, the *second section* herein addresses our recommendations regarding how the IRS could do proactive, educational outreach to stakeholders more efficiently and effectively, and the *third section* provides our views on federal legislation to regulate tax return preparers.

SECTION ONE:

From Your Experience Discuss How Your Members' Organizations Attract Talent, and Develop and Retain Key Employees. What Are Their Practices for Building Future Leaders?

In today's economy, accountants at all experience levels are in demand. Attracting and retaining enough qualified people to meet the need for our services is one of the biggest roadblocks to growth for our member firms. The problem is compounded by the fact many of our most experienced professionals will be reaching the traditional retirement age in the next decade.

The Internal Revenue Service is in the same situation. In previous testimony before the IRS Oversight Board, we stressed the Service's problem of coping with an aging workforce. This situation is resulting in the IRS experiencing a higher than normal attrition rate among its mid-level and rank-and-file employees, primarily through retirements. Replacing these retirees and the resulting loss of experience and "institutional memory" are major challenges.

Accounting firms are developing innovative strategies to address this problem. Although in many cases, we are in competition for the same talent pool, we believe that a properly staffed IRS is essential to the fair and effective administration of our country's tax system. Therefore, both from the perspective of hiring new employees and in addressing an aging workforce, we are pleased to offer our insight on a problem that our profession is grappling with and which the IRS and other governmental institutions face as well.

A. *What incentives has your organization found to be the most value in attracting a new generation of workers?*

Our member firms are developing new strategies to attract talent. According to a 2005 study by the AICPA¹, enrollments in accounting programs nationwide climbed 19 percent between 2000 and 2004 to 171,000 in part due to the job demands created by the Sarbanes-Oxley Act. Noteworthy, the same study points out that 55 percent of the persons receiving Bachelor's and Master's degrees in accounting were female; and ethnic minorities made up 23 percent of the Bachelor's degrees and 21 percent of the Master's degrees in accounting.²

Unfortunately, this increase in supply still does not meet the demand. AICPA President Barry Melancon recently stated, "We're in a competitive game to beat other professions because the demographics are such that we are not going to replace financial professionals one-for-one over the next 20 years – no matter that accounting enrollments are full today."³

Accounting firms are finding that offers of high salaries and dependable employment opportunities are not enough for today's accounting majors. Graduating students are now demanding meaningful and diverse work opportunities, coupled with a flexible work-life, and a strong emphasis on technology and the Internet. Young professionals do not want to be locked into working for a specific department, but instead desires the ability to experience a number of functions or departments.

We have found that identifying talented college students well before graduation and providing information about our profession as well as internships to them is effective. Our member firms are stressing the important role that they play in the capital markets and in the economy as a whole. In other words – what we do matters.

¹ *The Supply of Accounting Graduates and the Demand for Public Accounting Recruits*, American Institute of Certified Public Accountants, 2005 edition. Also, see summary of study at URL: <http://www.aicpa.org/pubs/cpaltr/oct2005/supply.htm>

² For brief discussion of study cited in preceding footnote, see also "Accounting Becomes a Popular Major, Accounting Technology, August 2005, page 36.

³ "Star Search, Recruitment and Retention in the Post-Reform Era," the Statement, Maryland Association of Certified Public Accountants, September/October 2007, page 4.

What the IRS does matters as well. The IRS is essential to our country's economic well being. The fair and effective administration of our tax system is challenging work that should provide meaningful experience and opportunity. The IRS needs to do a better job of promoting its purpose and mission. This will make it a more attractive place to work.

Many of our large firm members have extensive, formal college intern programs and have found this to be an effective way to attract talent. Smaller practice units provide part-time employment to college students in the busy season. The IRS should consider similar programs.

The young professional is interested in building a resume in the early years of his or her career. AICPA members in senior firm positions find a meaningful number of new CPAs are interested in diverse assignments including global assignments and the opportunity to explore different careers paths. While the IRS may have limited opportunities for placing employees overseas, the concept of "global opportunities" for IRS employees may more be a function of the ease with which the Service is able to place employees in "desirable" U.S. locations. In addition, the IRS should consider a more formal program of job rotation so that young professionals gain new experience and perspective.

We believe that an even more critical aspect of a firm's workforce needs involves ability to develop and retain key employees for mid-level positions within the firm, a challenge very similar to what the IRS faces in identifying, developing, and retaining employees.

Issues of flexible work-life often become more important when the professional takes on family responsibilities. This is the point where job sharing, working-at-home, and telecommuting options become important to the worker. Consistent with this concept, a 2004 AICPA research study indicates that "there is no compelling evidence for an opt-out revolution taking place among female CPAs at Public Accounting firms."⁴ This study indicates that "at least" 90 percent of all women on maternity-leave return to work as full-time or part-time employees, with approximately 62 percent of these women returning full-time to their jobs.

Flexible work-life opportunities are also more important as professional accountants approach retirement. Many of our most talented professionals are not interested in just "turning off the switch" when they reach retirement age, and would welcome the opportunity to do meaningful work in a different setting, perhaps on a reduced schedule.

We believe the IRS's strengths in the competition for talented employees may revolve around the degree of work-life opportunities the Service can offer its workforce. Our 2004 research study indicates that the most frequently cited reasons for leaving public accounting revolve around work conditions such as schedules, hours, and assignments.⁵ The same principle applies to retiring workers as well. This is an area where the IRS should be able to thrive and find success.

⁴ *AICPA Work/Life and Women's Initiatives 2004 Research: A Decade of Change in the Accounting Profession: Workforce Trends and Human Capital Practices*, by the AICPA Work/Life & Women's Initiatives Executive Committee, 2004, page 8.

⁵ *Ibid*, page 8.

B. *Can you identify and provide examples of key practices that your organization uses to empower and involve employees in decision making processes?*

A July 2001 Practical Accountant article describes a Department of Labor study about the “glass ceiling” and what the study describes as the three phases of career advancement: (1) apprenticeship; (2) the pipeline (middle-management); and (3) the decision-maker.⁶ The article states:

In the apprentice stage, you learn the trade and others take the credit for the work that you perform. In the middle management stage, you take credit for your work and develop your own credentials. Success at this stage [middle management] opens opportunities to the decision-making level.

The decision making process found in accounting firms in 2007 bears little resemblance to the hierarchical structure described in the Practical Accountant article. Today’s firms strive to integrate new professionals into the decision-making process during the course of an assignment. Similarly, these firms create a team of persons who work on a portfolio of clients, with the team (as a whole) making the business decisions, resulting in the professional staff gaining a sense of empowerment and inclusion with respect to decision-making. New professionals may have the opportunity to work on multiple teams in the course of a year.

Under this model, the firm strives to create a culture of inclusion and respect for the opinions of all. In theory, a collaborative approach is developed, with the ability of any professional to provide feedback to any other professional at any level within the team or firm. We have been informed that one firm has established work-life advisory councils or compensation design teams to address work-life matters on an economic unit (i.e., geographic or office-by-office) basis. We believe the IRS should be able to adapt and successfully integrate the team decision making approach or model for the Service’s workforce.

C. *Both managers and employees view training as a critical factor in learning how to work in new and different ways. What does your organization do with respect to maintaining and upgrading employee technical skills, as well as training in teamwork, communications, mentoring and networking to help employees grow in their rolls and job expectations?*

Accounting and other professional firms find employee training as essential to the future prospects of the firm overall. One U.S. firm has the philosophy that “If you train them, they will stay...When they feel like you’re willing to invest in them and give them the skill set to do better, you have more loyal employees and very little turnover.”⁷

The AICPA believes this mantra can clearly become a human resources theme for the IRS in terms of its employee training needs. However, as mentioned above, prior to the formality of hiring a new professional, accounting firms are employing robust student development and

⁶ “Is the Glass Ceiling Cracking for Women?,” The Practical Accountant, July 2001, page 56.

⁷ “Training Employees – Linda O’Neal: We Decided We Couldn’t Be Everything to Everybody,” by Alexandra DeFelice, The Practical Accountant, June 2007, page 10.

internship programs. Our members in large firms are finding that – even internship programs – require training at every level of the intern’s work experience.

Firms are employing a number of delivery methods for training, in addition to the traditional classroom coverage of technical subjects. Other delivery methods include: (1) web-based training; (2) the virtual classroom; (3) simulations; and role play.⁸ The firms recognize that the delivery method employed may depend on the subject matter of the course, or even the preference of the employee himself.

Part of any employee development process also includes use of performance reviews, teaming, and mentoring and coaching. Firms find mentoring as particularly important for staff development. Mentoring provides a firm’s staff with someone they can bounce ideas off and receive honest feedback, including career guidance.⁹

Many firms have a robust dialogue with universities and colleges that offer accounting curriculums. Seminars and presentations are put on for both the accounting faculty and students. Our members in public practice find that a large number of accounting PhDs need and benefit from practical work experience. Firms are providing faculty members with a “professor in residence” program, a type of internship program for faculty.

The AICPA is a strong supporter of employee training for Service employees, and we believe many of our suggestions in this particular section could help the Service to develop and retain a high quality workforce. This is an area of significant importance to our members; some of the most frustrating experiences encountered by taxpayers and tax practitioners in dealing with the IRS occur because of a lack of training on the part of IRS employees. Our members find it is much easier to work out a solution that is fair to both the tax system and the taxpayer if the IRS personnel resolving the issue are knowledgeable and well-trained.

In previous comments before the IRS Oversight Board we recommended that the IRS utilize CPAs and other stakeholders in teaching parts of the training curriculum for IRS personnel. By including outside tax professionals in the training process, we believe IRS employees become more sensitized to the burdens that taxpayers face due to complicated tax laws and regulations. We firmly believe private sector involvement in the training process helps IRS employees to conduct new programs effectively for the tax administration process, while minimizing intrusion and taxpayer burdens.

D. How Do Your Members Encourage the Development of Future Leaders with Strategic Vision?

In the preceding section, we generally discuss the need for increasing the technical skills of our staff. An area equally important, but sometimes overlooked, is leadership development. By

⁸ “KPMG, LLP: Turning on A Dime,” by Lorri Freifeld, Training, September 6, 2007

⁹ “Teach Them Well: Mentoring Programs Go a Long Way Toward Staff Retention, Development,” by Jerry Ascierio, California CPA, January-February 2006, page 17.

focusing on leadership skills, a firm composed of a staff with excellent technical skills can invariably go to a higher level of performance and reputation.¹⁰

A firm's leadership development program should encompass a professionals complete "career architecture," through an emphasis on career maintenance, mentoring, and progressive technical and leadership skills promotion. For example, one firm has established a leadership development program concentrating on managers and senior managers that the firm has singled out as likely future leaders.¹¹

Leadership development is customized to the particular professional, with a focus on the appropriate career pace, schedule, workload demands, and responsibilities; designed to provide the professional with the requisite experiences and opportunities for career development. Our members view leadership development more of a process, as opposed to a one time event.

The AICPA recognizes that the IRS already operates a very, positive leadership program under its Senior Executive Services (SES) training program for new senior executives, and the Service's SES program likely includes many of our recommendations relating to best practices with respect to leadership development.

SECTION TWO:

Innovative Outreach to Customers: How Would You Recommend the IRS Do Proactive, Education Outreach to Stakeholders More Efficiently and Effectively, and How Would You Measure the Results?

- A. *The IRS's e-file strategy is an excellent example of focused customer outreach to encourage the adoption of innovative technology. How can the IRS apply this type of strategy to do proactive, innovative outreach to achieve similar results in other areas of tax administration, such as encouraging voluntary compliance?*

The AICPA appreciates: (1) the benefits electronic filing offers to tax administration and taxpayers; and (2) the successes the IRS has had with its electronic tax filing (e-filing) program during recent filing seasons, successes due in large part to the Service's vigorous efforts to gain the input and involvement of affected parties.

We support the Service's continued development of electronic filing, as well as further improvements in the modernized e-file (MeF) platform. CPAs recognize the administrative efficiencies and budgetary savings electronic tax filing achieves for the IRS, and the customer service benefits that accrue from an effective e-filing program. The administrative benefits of e-filing include faster tax processing, reduced cycle time, quicker identification of emerging audit trends, and the potential for more current resolution of taxpayer uncertainties.

¹⁰ For a discussion of how leadership skills can contribute to a firm's business objectives, see "Training Takes Off: Firms Are Turning to Formal Third-Party Training Courses, Especially With Regard to Business Development and "Soft" Skills," by Jeff Simpson, *The Practical Accountant*, October 2006, page 2006.

¹¹ Ascierio, Op cit.

The IRS closely collaborated with the AICPA during the 2006 and 2007 filing seasons on the Service's rollout of the mandatory large corporate and exempt organizations e-file programs on the MeF platform; and also with respect to its rollout during the 2007 filing season of the large partnership e-file program on the MeF platform. With respect to these e-file programs, the AICPA played a proactive role in surfacing issues and solutions that ultimately contributed to the success of e-file. We plan on continuing to work closely with the Service to meet its expectations for these programs for the 2008 filing season; and with respect to its future rollout of the Form 1040 MeF program.¹²

We support using the AICPA/IRS collaborative model for e-file for other customer outreach initiatives involving the Service, especially from the perspective of encouraging voluntary compliance. In general, we wholeheartedly support efforts by the Service to reach out to the AICPA and other stakeholders as much in advance as possible prior to the Service's implementation date for a new program. By doing this the IRS will receive constructive feedback about the pending new program, input that will likely improve the program upon implementation; and such stakeholder outreach is likely to garner a higher degree of stakeholder "buy-in" or support for the program.

B. To reduce the tax gap, the IRS needs to go beyond enforcement efforts and adopt a long-term plan that includes changing taxpayer behavior. How can the IRS partner with other organizations to do effective outreach to individual taxpayers and small business owners?

The AICPA supports the suggestion by the National Taxpayer Advocate Nina Olson for the IRS to place a significant effort on understanding the tax gap and the non-compliance rates associated with small business taxpayers. According to IRS statistics, non-compliance by small business is the single largest component of the tax gap, representing about 44 percent of the gross federal tax gap of \$345 billion.¹³

While we support the concept of increased enforcement to address the tax gap, we recognize (like the National Taxpayer Advocate) that the IRS should increase its focus on educating small businesses as opposed to solely relying on its enforcement apparatus. In Ms. Olson's report to Congress, she suggests increasing the scope and reach to the small business community of the Small Business/Self-Employed Division's Communication, Liaison, and Disclosure (CLD) function. We support an increase in resources for CLD, as well as enhancement of CLD's educational component.

CLD is doing a very commendable job in servicing the small business and tax professional communities in terms of its stakeholder outreach efforts despite the reduction in staff and apparent resources that took place a few years ago. We do believe a further commitment to programs like the Service's Small Business Tax Workshops and its online resources such as the Small Business and Self-Employed Online Classroom, Small Business Resource Guide, and the

¹² See IRS Modernized e-File Form 1040 Status Report, dated January 2008, as provided by the IRS to the AICPA and posted to aicpa.org at URL: http://tax.aicpa.org/NR/rdonlyres/8F52D6AA-A50D-466D-BD91-2C62C73FB8BD/0/1040_MeF_Overview__AICPA_012008.ppt

¹³ See the National Taxpayer Advocate's 2006 Annual Report to Congress, December 31, 2006, page 174.

Virtual Small Business Tax Forum are positive endeavors. In order to enhance further development of these types of products, it would be helpful for the SB/SE Division to study the market penetration and use of these resources by small firms.

The AICPA does recognize that the Service heavily relies on irs.gov and the Internet to accomplish much of its “customer outreach” to small business. We appreciate the Service’s understanding that a substantial majority of small businesses rely on CPAs and other tax professionals to prepare their tax returns and provide professional advice. For this reason, the Service heavily utilizes the AICPA and other professional associations to assist the government in its outreach efforts to the business community on key tax administration issues.

C. The Taxpayer Assistance Blueprint includes themes to improve education and public awareness activities; optimize the use of partner services, elevate self-service options to meet taxpayer expectations; and develop performance and outcome goals and measures. From the private sector perspective, how do you recommend that the IRS conduct proactive outreach, form collaborative partnerships, and engage in best practices to manage customer expectations?

The AICPA supports the Taxpayer Assistance Blueprint (TAB) – a congressionally mandated initiative calling for development of a comprehensive taxpayer service program for the IRS. TAB involves a collaborative effort by the IRS, the IRS Oversight Board, and the National Taxpayer Advocate; with Phase 1 of TAB delivered to Congress in April 2006 and Phase 2 in April 2007.

Phase 1 of the Blueprint identified five strategic themes for improving customer service: (1) improve and expand education and awareness; (2) optimize the use and support of partner services; (3) enhance self-service options for taxpayers; (4) improve and expand training and support services; and (5) develop short-term performance and long-term outcome goals and metrics. Phase 2, which describes what it refers to as the 5 year TAB Strategic Plan, details a suite of improvements for various taxpayer service programs which would optimally be based on joint taxpayer, government, employee, and stakeholder engagement.

As the IRS develops programs to implement the TAB recommendations, we continue to stress the need for the Service to maintain the appropriate balance between customer service and enforcement – a balance that the government, Congress, and stakeholders recognize and support on a conceptual basis. Moreover, we urge the IRS to maintain its commitment to further improvements in the Business Systems Modernization (BSM) program and other technology efforts; such as the customer account data engine (CADE), the system designed to replace the master file for taxpayer records.

We strongly support the premise of the Blueprint that close collaboration is vital to the success of implementation of TAB’s recommendations. Continuous, early engagement of stakeholders in the development of any new IRS program will ensure better, stronger support for the program over the longer term. We believe this is the best way to address what the IRS Oversight Board refers to as “manag[ing] customer expectations.”

In Congressional testimony on May 9, 2007, then Acting Commissioner Kevin Brown referred to projects that the IRS envisions implementing as part of TAB, including enhancements to the Service's telephone service and www.IRS.gov, as well as multi-year research studies designed to promote an understanding of optimal service delivery and the effect of service on compliance.¹⁴ The AICPA views these projects as laudable, and we stand ready to provide input for TAB throughout the implementation process.

D. How do you recommend the IRS measure results and outcomes so it can evaluate the effectiveness of its outreach?

The Taxpayer Assistance Blueprint provides for a number of positive customer service oriented projects which TAB refers to as a "Multi-Year Research Portfolio." Some of the suggestions for studies/topics for the portfolio include (among others): (1) the impact of service on compliance; (2) taxpayer burden; (3) outreach and education; (4) self-employed taxpayers; (5) IRS employee training; and (6) taxpayer service costs.¹⁵

As the Service begins the process of evaluating and prioritizing these proposed studies to obtain annual funding, we stress the ongoing need to maintain a high level of outreach and dialogue with the stakeholder community to ensure positive implementation and minimal taxpayer burdens, both critical ingredients for program success.

SECTION THREE:

The Congress is Considering New Legislation That Would Regulate the Tax Preparation Industry. If the Legislation Passes, How Would You Recommend That a Program Be Created That is Effective?

A. The IRS maintains that it does not have sufficient resources to develop, administer and monitor a federal regulation of tax preparers program. Would it be possible for the IRS to build on pieces it already has in place, such as the VITA program, the EA competency examination testing, and the ERO registration process, to implement a preparer regulation program?

This section provides the AICPA's comments on the federal regulation of tax return preparers. In drafting these comments, we recognize that Senator Jeff Bingaman introduced legislation last year (S. 1219, the Taxpayer Protection and Assistance Act of 2007) that specifically addresses some of these issues. When this section refers to the "preparer registration proposal," we are referring to the general concept of the regulation of tax return preparers, and at other times, we will specifically refer to S. 1219.

¹⁴ Acting Commissioner Kevin Brown, Statement on the Internal Revenue Service's FY 2008 Budget, before the Senate Appropriation Committee, Subcommittee on Financial Services and General Government, May 9, 2007.

¹⁵ Taxpayer Assistance Blue Print Phase 2 Report, Executive Summary, April 2007, page 12.

The AICPA Commitment to Professional Ethics

The AICPA strongly supports the implementation of high professional standards for tax practitioners; and for this reason, we are sympathetic to the underlying reasons driving support for the federal regulation of tax return preparers. Our longstanding track record regarding high professional standards for CPAs, includes the AICPA Code of Professional Conduct and our enforceable Statements on Standards for Tax Services. These standards provide meaningful guidance to CPA members in performing their professional responsibilities.

We have consistently supported protecting the public interest by prohibitions against misuse of our tax system. We continue to be actively engaged in proposing and evaluating various legislative and regulatory matters designed to identify and prevent taxpayers from undertaking, and tax advisers from rendering tax advice on abusive transactions.

While the AICPA strongly supports initiatives designed to ensure high professional standards among tax professionals, we are not convinced that Congressional proposals calling for the regulation of unlicensed tax practitioners will accomplish the stated objectives advanced by the proponents of such proposals. We believe that there is a need to better understand the nature of the problem before coming to any particular conclusions as to the best solution.

The AICPA also notes that the preparer registration legislation is being promoted at a time when the government is reviewing the current regulatory framework governing tax return preparer penalties, their interrelationship to taxpayer penalties, and the regulations governing practice before the IRS (i.e., Circular 230).¹⁶ Treasury's call for a review of the regulatory regime governing preparer penalties is consistent with our concern that the preparer registration legislation warrants further evaluation.

Addressing EITC and Refund Anticipation Loan Problems

Legislation to regulate preparers has generally been proposed by members of Congress as a partial response to: (1) the high error rate associated with the Earned Income Tax Credit (EITC) claims; and (2) consumer protection concerns associated with refund anticipation loans.

We share the concern regarding the high error rate associated with EITC claims and with the proliferation of high-interest, short-term refund anticipation loans (RALs). According to the Treasury Inspector General, an IRS study of 1999 tax returns suggests that – out of the \$31 billion in EITC claims by taxpayers that year – between 27 and 32 percent of those claims were erroneous.¹⁷ With respect to the RALs, many commercial preparers aggressively encourage the use of RALs by low income taxpayers, often misleading these taxpayers about the true cost of such loans. These concerns have resulted in the introduction of bills such as S. 1219. Among

¹⁶ See IRS Notice 2008-13 regarding “Guidance Under the Preparer Penalty Provisions of the Small Business and Work Opportunity Act of 2007.”

¹⁷ Testimony of J. Russell George, Treasury Inspector General for Tax Administration, Hearing on IRS's Fiscal 2006 Budget Request; Senate Committee on Appropriations, Subcommittee on Transportation, Treasury, the Judiciary, Housing, and Urban Development, and Related Agencies, April 7, 2005.

other provisions, S. 1219 provides for the regulation of what the bill refers to as “federal tax return preparers” and “refund anticipation loan facilitators.”

Before seriously considering legislation to regulate tax return preparers, the AICPA recommends Congress consider proposals that narrowly focus on solutions to address issues associated with the EITC program and the consumer protection issues surrounding refund anticipation loans. By creating solutions targeted to the specific problems associated with the EITC and RALs programs, we believe such proposals may result in more tangible increases in compliance than a preparer registration proposal might alone yield.

The AICPA also believes the IRS currently has at its disposal tools that, if utilized and enforced, would achieve: (1) immediate reductions in fraudulent return preparation; and (2) long-run compliance improvements with respect to unregulated tax preparers. Any introduction of a new preparer regulation regime is premature and could potentially take years to see any possible rewards.

Specifically, we advise that Congress critically review the following programs to achieve greater compliance by unregulated tax return preparers: (1) existing statutory and regulatory authority; (2) public awareness campaigns; (3) the electronic return originator program; and (4) the Volunteer Income Tax Assistance (VITA) program.

Enforcement through Existing Regulatory Authority

The AICPA believes the Service already has sufficient authority to regulate federal tax return preparers without the need for new legislation. First, the IRS has substantial authority to regulate tax preparers through the penalty authority under current law. The Internal Revenue Code permits the Service to assess (among others) penalties for the understatement of a taxpayer’s liability (section 6694); the failure to furnish a copy or to sign the return (section 6695); the promotion of abusive tax shelters and gross valuation overstatements (section 6700); the aiding and abetting of the understatement of tax liability (section 6701); and actions to enjoin certain conduct by preparers or promoters (sections 7407 and 7408).

The government also regulates practitioners through the IRS’s Office of Professional Responsibility (OPR). OPR enforces Circular 230 which governs the regulations for practice by certified public accountants (CPAs), attorneys, and enrolled agents (EA) before the Service. OPR has the authority to discipline these Circular 230 practitioners through disbarment and other sanctions. One of the largest sources of referrals to OPR is through information referrals from IRS compliance personnel.¹⁸

While unlicensed preparers are not subject to Circular 230, they are subject to a number of civil penalties, including the section 6694 understatement of taxpayer’s liability penalty. We believe the recent modifications to section 6694, including the marked increase in the dollar amount of the penalty from \$250 to a level of \$1,000 or more -- should provide the Service with significant authority to regulate “unethical” or incompetent unlicensed preparers.

¹⁸ The Internal Revenue Manual (IRM) requires IRS to refer all practitioners subject to section 6694 penalties to OPR.

Public Awareness Campaign

The AICPA strongly supports the Service's annual news release of tips advising taxpayers how to choose a competent paid federal income tax return preparer. This publicity campaign receives wide coverage by U.S. newspapers and media outlets. It is an excellent foundation for any further efforts by the Service to educate the public about unethical and incompetent practices by preparers. The Service's current media plan is crafted in a very positive way; it provides general tips on picking a competent preparer without putting itself in the difficult and likely un-winnable position of choosing sides between preparers who are not regulated by Circular 230, as well as the differing constituencies currently regulated under Circular 230 (i.e., CPAs, attorneys, and enrolled agents).

Electronic Return Originator Application Process

The AICPA recommends that Congress and the IRS review the current electronic return originator (ERO) application process. The ERO process significantly overlaps and may even duplicate any "limited" registration process to address unregulated tax return preparers. Under the current ERO application process, the IRS conducts a background check of principals and responsible officials affiliated with a tax return preparer's firm. This background check includes: (1) an FBI criminal background review; (2) a credit history check; and (3) an IRS records check with respect to the preparer and the firm's adherence to tax return and tax payment compliance requirements, including a review of any prior non-compliance under the IRS e-file program.

In its September 2007 report on the ERO program, the Treasury Inspector General for Tax Administration (TIGTA) points out that certain inadequacies exist within the current IRS procedures for screening and monitoring EROs and that such inadequacies increase the risk to the public and to the federal government for potential losses due to unscrupulous e-file providers. The AICPA supports the implementation of new procedures with respect to EROs in order to mitigate any risks to the public and government; however, we believe the enactment of a wholly new tax return regulation regime (one that shares common administrative features to the current ERO program) will not likely reduce the risks associated with unscrupulous tax preparers. Instead, we believe it would be far more constructive (and resource efficient) to improve on and build onto the current ERO program, as opposed to implementing a largely duplicative regulatory-required administrative machine.¹⁹

VITA Program

In crafting tax return preparer regulation proposals, we suggest that the legislation proponents review the quality concerns surrounding the Volunteer Income Tax Assistance Program (VITA). Several years ago, in response to quality concerns about VITA, the IRS mandated that volunteers be "certified" in order to participate in the VITA program. Under this process, a volunteer must complete a module or modules found in the IRS's on-line "Link and Learn Taxes" course. The number of modules that need to be completed depends on the type of assistance the volunteer

¹⁹ The Treasury Inspector General for Tax Administration Report on "Better Screening and Monitoring of E-File Providers Is Needed to Minimize the Risk of Unscrupulous Providers Participating in the E-File Program," Reference No. 2007-40-176, September 19, 2007.

intends to provide. There are five different modules: Basic, Intermediate, Advanced, Military, and International. For each of the five modules, there is a post-test that must be completed with a satisfactory grade in order for the volunteer to become certified. Each test is scenario based, and each volunteer must pass the basic module at a minimum.²⁰

Volunteers can take the test numerous times to achieve a passing score for a given module. The results are then supposed to be submitted to a local IRS SPEC representative who is responsible for assuring the volunteers at each site are certified. It is our understanding that no public information has been made available regarding the relative success of the IRS's VITA certification program to address quality issues.²¹ We urge the government to perform a more thorough study of VITA and VITA certification before enacting another preparer regulation program that may place significant burdens on the Service's limited resources.²²

Invisible Preparers

There are a significant number of individuals who prepare returns who do not have (or do not work) under the supervision of professional tax return preparers or tax practitioners as defined in Circular 230. These individuals are commonly referred to as "invisible" tax preparers because, while they participate in return preparation, they cannot be identified through: (1) return signatures since they don't sign the returns, (2) lists of employees of reputable preparers, or (3) professional organizations. As such, it should be noted that none of the compliance programs already in place, or of those being proposed, address fraud committed by these individuals. Only through the dedication of resources to criminal tax investigations can unscrupulous tax return preparers be removed from our tax system.

B. Some have recommended that a coalition of professional organizations join together to create a Joint Licensing Board to set licensing fees, testing fees, and testing requirements, and to work with the IRS to set examination requirements. Do you see this as a possibility?

As stated previously, the AICPA is not convinced that the that Congressional proposals calling for the regulation of unlicensed tax practitioners will accomplish the stated objectives advanced by the proponents of such proposals; and that there is a need to better understand the nature of the problems caused by unscrupulous preparers before coming to any particular conclusions as to the best solution. Moreover, we believe the Service already has sufficient authority to regulate

²⁰ The five training modules include Basic, Intermediate, Advanced, Military, and International. A volunteer must achieve a minimum score of 80 percent to pass.

²¹ Two recent Treasury Inspector General for Tax Administration (TIGTA) reports reviewed the VITA program, but did not address the certification program. See TIGTA Report on "Significant Improvements Have Been Made in the Oversight of the...[VITA]...Program, but Continued Effort Is Needed to Ensure the Accuracy of Services Provided," Reference No. 2006-40-004, November 2005. Also, see TIGTA Report on "Oversight and Accuracy of Tax Returns Continue to Be Problems for the...[VITA]...Program," Reference No. 2006-40-125, August 31, 2006.

²² On 11/16/07, the IRS announced plans to sample 3,600 VITA returns to address quality concerns. The results of this study should be examined to see if testing and certification are working to improve compliance problems. The issues being addressed in VITA are similar to those of unregulated tax return preparers.

federal tax return preparers without the need for new legislation, such as the Service's substantial penalty authority under current law. For similar reasons, we are unable to envision how a Joint Licensing Board (administered by professional organizations) will successfully resolve the problems caused by the practices of unscrupulous or invisible tax return preparers. It remains our impression that the best way to address unlawful preparers, is through a process that can impose real consequences; that is, through effective utilization of current IRS programs or by an increase in criminal investigations.

C. How can the program be implemented at reasonable cost, without passing increased fees and burden to the taxpayer?

Issues for Consideration Should Congress Pass Preparer Regulation Legislation

If Congress decides to regulate federal tax return preparers, the AICPA requests that Congress: (1) recognize the varying levels of competency and professionalism that exists among tax return preparers and not create marketplace confusion; (2) exempt Circular 230 practitioners from such legislation; and (3) provide adequate funding for oversight of such a program. These concerns, as described below, attempt to address the issues associated with costs and burdens imposed on taxpayers and tax administration.

1. Marketplace Confusion

As stated previously, the AICPA supports Congressional efforts to encourage the highest professional standards for all tax return preparers. However, the AICPA urges Congress to concentrate its efforts to establish a new regulatory regime on preparers who are not already regulated under Circular 230.

Taxpayers require tax expertise that extends beyond the preparation of their federal individual income tax returns. Many taxpayers utilize the services of the same tax practitioner to prepare their individual tax returns as well as the returns for their family-owned business, for example. Other needs include state and local tax matters, representation before the IRS in examination and collection matters, and non-income tax matters such as estate, payroll and excise taxes. Given the need for specialization in the marketplace today, it is imperative that the title assigned to any newly regulated preparers (resulting solely from passage of legislation to regulate the unlicensed) be clearly distinguishable from titles associated with existing professionals who are already bound by professional and regulatory standards, such as certified public accountants (CPAs), attorneys and enrolled agents (EAs). New regulation of tax preparers could lead to confusion in the marketplace if currently unregulated preparers obtain, through this process, a designation such as "regulated," "licensed," or "certified." Such a designation would give consumers the misimpression that those formerly unlicensed persons have somehow earned additional credentials and expertise. The AICPA suggests using a designation such as "IRS registered tax return preparer" to avoid this misimpression and confusion.

2. *Exemption for CPAs, Attorneys, and Enrolled Agents*

The AICPA continues to support language contained in S. 1219 that would require the IRS to, within one year of enactment, prescribe regulations that will regulate compensated return preparers not otherwise regulated under *31 USC 330* (the enabling legislation upon which Circular 230 is issued). Since they are already regulated by Circular 230, CPAs, attorneys, and EAs should be exempt from any new regulation regime imposed on currently unlicensed preparers. Previously proposed legislation has properly recognized that CPAs, attorneys, and EAs are already subject to regulation and professional standards imposed upon them by state boards of accountancy, state bars, court systems, and Circular 230, and we recommend that any proposal continue to include such exemption.

3. *Funding of Regulatory Oversight*

Current proposals to regulate unlicensed preparers, such as S. 1219, would necessitate that the IRS Office of Professional Responsibility develop a whole new enforcement program. This would place significant resource demands on an already resource constrained IRS, requiring the IRS to allocate a portion of its limited budget to this new initiative, while sustaining other competing, but equally important priorities.

Consistent with previous comments, the AICPA strongly believes that any preparer regulation regime should be funded in a manner that ensures that the persons subject to the new procedures (i.e., the previously unregulated tax preparers) be the persons to bear the cost of the new program. This is far more equitable than requiring the overall system, or that matter, CPAs, attorneys, and EAs who are already subject to Circular 230, to fund the new examination and registration process. These latter tax practitioners already pay significant fees to obtain and maintain their professional status.

Previously proposed legislation provides the IRS with the authority to utilize the funds collected through the assessment of preparer penalties for the funding of a public awareness campaign. As stated previously by the AICPA, there is concern that earmarking penalty receipts to satisfy legislative mandates could create an inadvertent (and possibly an overt) incentive for Service employees to initiate overzealous and inappropriate enforcement actions against tax return preparers. This is of particular concern given the current environment related to return preparer penalties and increased preparer standards under IRC section 6694. We believe that any funds collected through the assessment of preparer penalties should be directed to the federal government's general revenues and not be earmarked for the administration of specific federal programs, such as a preparer registration initiative.

Thank you for the opportunity to share these views with you.