Statement of Leslie S. Shapiro, EA, JD

On Behalf of the National Association of Enrolled Agents

Before the IRS Oversight Board

Room B-318 Rayburn House Office Building

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Madam Chairwoman and members of the Oversight Board, I am honored to present this statement on behalf of the National Association of Enrolled Agents (NAEA), the professional society of Enrolled Agents.

I am Les Shapiro, EA, JD, president of the Padgett Business Services Foundation and chair of the NAEA Government Relations Committee. I believe you already have a my biography in your notebook.

Today, I am representing the National Association of Enrolled Agents whose 10,000 members are tax professionals licensed by the U.S. Department of the Treasury to represent taxpayers before all administrative levels of the Internal Revenue Service (IRS).

Enrolled Agents were established in legislation enacted in 1884 as part of an effort designed to help ensure ethical and professional representation of claims brought to the Treasury Department. Members of NAEA ascribe to a Code of Ethics and Rules of Professional Conduct and adhere to annual continuing professional education standards that exceed IRS requirements.

Like attorneys and Certified Public Accountants, we are governed by the regulations in Treasury Department Circular Number 230 in our practice before the IRS. We are the only tax professionals who are tested by the IRS on our knowledge of tax law and procedure.

Each year, Enrolled Agents collectively work with millions of individual and small business taxpayers by providing tax preparation, tax planning, representation, and other financial services. Consequently, Enrolled Agents are uniquely positioned to observe and comment on the average American taxpayer's experience within our system of tax administration.

Regulation of Commercial Preparers

The members of the National Association of Enrolled Agents are dedicated to the integrity of the tax system and the roles professional responsibility and ethics play in preserving that integrity. It therefore is disturbing to us that there is an increase of taxpayer belief that tax returns will be accepted regardless of the facts reported on them. This growth principally emanates from the declining rate of audits conducted on returns in recent years. It seems that a great number of taxpayers have been lulled into concluding that gaming the system and playing the audit lottery are acceptable behavior. A recent Gallup survey of taxpayers found that there is a marked increase in taxpayers feeling it is all right to cheat on their tax returns. An obvious centerpiece concern in this

respect is that promoters and some tax professionals are selling a wide range of tax schemes and devices designed to improperly reduce taxes based on the simple premise that they can get away with it. It is clear that addressing this concern is needed. However, its resolution undoubtedly will not be limited to such schemes and devices.

The IRS has undergone major changes in the last several years. Former Commissioner Rossotti's reorganization of the IRS and the emphasis he placed on customer service may in part have been a catalyst in modifying taxpayer attitude. Most agree that his initiatives were good, were consistent with the 1998 IRS Restructuring and Reform Act, and have produced a better IRS. However, their implementation resulted in resources being shifted away from enforcement activities. Other contributing factors include discontinuance of the Taxpayer Compliance Measurement Program (TCMP), ineffective technology, and tax law complexity.

Commissioner Everson has begun efforts to turn that around. While he acknowledges that customer service plus enforcement equal compliance, he has announced that effective enforcement of the tax laws rather than further improving customer service will be the main focus of his administration. In this connection, he implicated the tax practitioner community in the diminishment of compliance and challenged all practitioners to raise their ethical standards in order to avoid actions being taken against them by the government. While much of this was done in regard to abusive tax schemes, it seems clear to NAEA and we believe to him that his efforts will not stop there. For example, at a November meeting of the Internal Revenue Service Advisory

Council (IRSAC), he was asked what IRSAC could do to help his enforcement endeavor. The IRSAC members were told in essence to stress the important role practitioners play in making our tax system work as it should. He did not limit his response to abusive tax schemes. Recent amendments to the regulations governing practice before the Internal Revenue Service (Circular 230) bear this out. The increased staffing in the Office of Professional Responsibility, the office that enforces those regulations, emphasizes his intent. Very recent proposed amendments to Circular 230, designed primarily to deal with abusive tax schemes, contain a "best practices" section that appears to address all aspects of tax advice and return preparation are further evidence of the role ethics play in our tax system. In addition, Mark Matthews has joined the Internal Revenue Service as deputy commissioner for services and enforcement. Mr. Matthews has a strong enforcement background, including having served as director of the Internal Revenue Service Criminal Investigation Division. Cono Namorato recently was appointed Director, Office of Professional Responsibility, replacing the incumbent who was in office for just one year. We surmise that it is Mr. Namorato's enforcement experience that resulted in his entry into the Office of Professional Responsibility and further evidence of the Commissioner's resolve.

Other initiatives, such as the replacement of TCMP by the National Research Program, enforcement programs being implemented in all four divisions of the Internal Revenue Service, and the recent announcement by the Commissioner of reallocation of human resources in order, in part, to complement his enforcement mandate, help round out the conclusion that cannot be escaped. He means business.

All who provide tax services must be cognizant of the strong enforcement component of tax compliance. It has the possibility of touching every aspect of tax advice and return preparation. Consequently, the topic of this panel at today's meeting is both important and timely.

NAEA finds that commercial return preparers are an enigma in today's tax practice world. We all seem to know there are problems in connection with services performed by paid preparers, but in many respects those problems are unknown and the product of anecdotal information and conjecture.

The first order of business is to define commercial return preparers. We define them as those 1) who prepare federal tax returns for a fee and 2) who are not required to possess any knowledge of tax law and procedure. At the state level, only California and Oregon regulate commercial tax return preparers and it is unlikely that there will be a significant increase in states engaged in that type of program in the future.

The number of commercial preparers is not known with any accuracy but estimates of upwards of 1 million individuals have been bandied about. With 55% of returns having been prepared by someone other than the taxpayers in 2001 and perhaps even more in 2002 and 2003, it seems safe to conclude that the number of returns prepared by commercial preparers is considerable and growing. A great number of these commercial preparers probably work in a structured environment, such as being with a

return preparation chain, or those who are entrepreneurs in the tax business. Others undoubtedly are seasonal tax return preparers who set up shop in January and close them down in April – sometimes referred to as "card table jockeys." Still others may be somewhere in the middle. Even if we had the numbers, we do not know the extent of training, if any, many of the commercial preparers have had and the manner in which they keep abreast of the changes in tax laws and procedures. Perhaps of greatest concern is the belief the public is not aware of the fact that many commercial preparers have no credentials. This may in part be the reason taxpayers "shop" for preparers who will prepare tax returns the way taxpayers wish them to be prepared (often unsigned by those preparers), to the detriment of responsible return preparers and the integrity of the tax system.

NAEA understands that tax return preparer penalties asserted in recent years have been minimal in number as related to the apparent potential for such penalties. Those that have been imposed in large measure have not been collected. We also know that attempts to implement recognition procedures in the electronic filing area, i.e. electronic filer originators (EROs), have been the subject of criticism due to systemic problems in background checks and the like as documented in the Treasury Inspector General for Tax Administration (TIGTA) report of June 2002. Further, many of the problems in the Earned Income Tax Credit (EITC) program are attributable to paid preparer involvement. Again, there does not seem to be a great deal of empirical data to support a conclusion as to the number of commercial preparers involved in the program and whether or not they

do a consistently worse job than other preparers, even though there have been some informative and well-written white papers on the subject.

Last year the National Taxpayer Advocate recommended in her report to Congress that there be a program to register commercial return preparers. It was an extremely ambitious program and one that would be expensive to establish and run. The Internal Revenue Service disagreed with the recommendation citing, among other factors, the expense of the program and that the issue is one for states to address rather than the federal government. NAEA believes there are problems both with the recommendation and the IRS response. We understand that Ms. Olson plans to propose more rigorous penalties and liability for commercial EITC preparers. While it may be unfair to opine on this year's proposal since we have not seen it, a threshold concern is the basis for believing that the IRS will be more successful than it has been in the past in collecting the penalties, buying into the program, and/or putting the troublesome violators out of business.

So what is the solution? There does not seem to be an easy one. We don't have hard facts. The available data is said to be inconsistent. Attempts to address the issues have not been successful. The Internal Revenue Service in fact may not be interested in the subject at this moment in time. Attempts by former advisory groups to come to grips with commercial preparer issues have met resistance. While there was support for a commercial preparer program by the National Commission on IRS Restructuring, it was removed from its final report. In addition, legislation sponsored by Senator Bingaman of

New Mexico, appears not to have gone anywhere. A recommendation by last year's IRSAC did not endorse a course of action for recommendation to the Commissioner, even though a subgroup supported a preparer certification program that would enhance the competency of individuals or firms that prepare tax returns for a fee.

In spite of all of the above, NAEA supports Ms. Olson's quest if not her vehicles for achieving it. If left unchecked, the perceived problems will continue to grow. In this connection, we believe the IRSAC Wage & Investment and Small Business/Self Employed subgroup reports warrant favorable consideration. In particular, the SB/SE subgroup's belief that the IRS should begin working with outside stakeholders to develop a program after examining a number of the "unknowns" would be beneficial.

NAEA subscribes to the belief that ethics are the fabric that holds a profession together. In the tax arena, Congress has identified those who qualify as federally authorized tax practitioners (FATPs), i.e. Enrolled Agents, Attorneys, and Certified Public Accountants. All are licensed individuals whose professional practice is circumscribed by codes of professional conduct and continuing education requirements. NAEA, of course, believes that the most meaningful step in overcoming the commercial preparer issues is to have all preparers attain Enrolled Agent status. Perhaps our Attorney and CPA colleagues have similar aspirations.

With the above said, FATPs have dual loyalties. One, of course, is to their clients. The other is to the tax system itself. NAEA thinks it safe to conclude that all

FATPs share the goal of safeguarding the integrity of our tax system and would be willing to work to make that happen. A possible beginning to assist the IRS in this respect is to form a task force comprised of representatives from the Enrolled Agent, attorney, and CPA organizations to work with the Service and others to help make this happen. NAEA would be pleased to head a practitioner organization steering committee to effect this. Other organizations, individuals, academicians, and the like with similar goals would be invited to the extent that the numbers would be manageable.

We are eager to move off dead center in our support of overcoming the frustrations we all share with respect to the unknown factors relative to the issue and doing our part in establishing a program evidencing ethics as a vital part of our tax system's integrity.

An Addendum: Offers in Compromise

The National Association of Enrolled Agents shares the concerns of the Internal Revenue Service about the offer in compromise program (OIC). We agree with the statement of Commissioner Hart that it is not a "give away" program. Like the commercial preparer issue, ethics and professional responsibility by practitioners are critical to the program's success, including its administration. In this regard, there should be zero tolerance of those who are violating their ethical responsibilities. We continue to be stunned by advertisements and solicitations proclaiming that there will be "pennies on the dollar" resolution on collection matters and other false, fraudulent, misleading, or deceitful claims by those seeking business from unsuspecting taxpayers.

NAEA respectfully offers a threshold position that may be helpful to the IRS. The offers in compromise programt is <u>not</u> a preparer issue – at least it should not be. Only Enrolled Agents, attorneys, and Certified Public Accountants (FATPs) are eligible to represent taxpayers in collection matters, including OICs. The IRS always should seek a valid power of attorney (IRS Form 2848) from a taxpayer's representative in each OIC matter and should deal only with the FATP in the substantive phases of that matter. We have found that such recognition procedures, mandated by the Commissioner's Conference and Practice Requirements and IRS manuals, to have been overlooked historically. We believe that adherence to them by IRS employees will serve as an instant filtering process.

Those of us in the business of tax practice are bewildered by the absence of any apparent concern and/or action by the government against organizations and individuals engaged in false, fraudulent, deceitful, or misleading advertising and solicitation for the purpose of attracting employment in matters related to the IRS. As indicated above, they are attracting patronage from unsuspecting taxpayers and overall are compromising the integrity of the tax system. Specifically for purposes of this statement they are unduly harming the OIC program, a program that the practitioner community and we surmise the IRS believe is needed. This is a matter that impacts both consumer protection and sound tax administration. We encourage appropriate action to address the growing concerns of most who witness such advertisements and solicitations. In this connection, we are not referring to truthful commercial free speech or to anything that may be at variance with our nation's free enterprise system.

If there is resistance for whatever reason to take action against the large organizations engaged in these abusive tactics, there is yet another approach. A "pennies on the dollar" television advertisement carries with it an actual or implied representation that a taxpayer who retains the advertiser will have the services of a practitioner when a collection matter affecting him or her occurs. Such practitioner would have to be an FATP. Under the regulations in Circular 230 (referenced above), a practitioner may not, in matters related to the Internal Revenue Service, assist, or accept assistance from, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this [solicitation] section. (See section 10.30(d) of Circular 230.) Taking appropriate action against a practitioner assisting an entity

engaged in wrongful advertising and solicitation would have the effect of closing down that conduct by the entity. This is based on the apparent concept that no one is going to risk the loss of his or her professional license by being on call for possible representation work.

There is yet another vital consideration relative to the integrity of the OIC program. It is that the IRS must buy into it and administer the program in a fair and even manner. In this regard, NAEA believes that while the IRS should not give away the store and that all taxpayers should meet their tax obligations, there are circumstances that give rise to administrative solutions. This is why we in fact have the OIC program.

Two years ago when NAEA participated at your meeting with practitioners, the streamlined OIC program had recently been initiated. We urged the proper training of IRS employees and the need to overcome the institutional resistance to making the program work efficiently and effectively. We have reports from our members in all pockets of the country that there has not been sufficient progress in this regard. Each IRS area seems to have its own guidelines with respect to what is acceptable to support offers and what is not. Some request documentation that is of a type not retained by taxpayers or otherwise not available. Bright light guidance is missing.

One of our members, a former collection officer, has stated that "the IRS is going out of their way to make offers unworkable…" Another has stated that he "has heard that IRS is effectively 'shutting down' the program covertly by making it almost impossible

to settle an OIC." Administrative procedures seem to be either unknown or overlooked. Internal directives that have come to the attention of our members indicate that National Office policy is being ignored. No one wins in this sort of environment.

As indicated above, we support a zero tolerance of those who are unethical in their representation of clients' interests before the IRS in OIC matters. However, satisfactory resolution is not a one-sided event.

As with the commercial preparer and OIC issues, NAEA stands ready to be of service to the Oversight Board and the IRS. Please call upon us for any assistance we may be able to provide. Meanwhile, you have our thanks for giving us the opportunity to report on these very important matters.