

Congress Looks at IRS Oversight of Tax Preparers

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BY MICHAEL COHN, ACCOUNTING TODAY

Congress held an oversight hearing Thursday to examine progress on the Internal Revenue Service's new tax return preparer initiative.



David Williams

The hearing by the House Ways and Means Oversight Subcommittee looked at the new requirements for tax preparer registration, testing and continuing education, along with the related costs and benefits.

"We do not yet know the full cost and compliance burdens the new program will place on return preparers, or whether the requirements will yield the intended benefits," said Rep. Charles Boustany, R-La., who chairs the subcommittee, during his opening statement. "Indeed, the new requirements will cost tax return preparers an estimated \$51 to \$77 million annually in registration fees alone. This does not include the additional costs associated with taking the competency examination and continuing education."

He noted that it is necessary for the IRS to conduct outreach to ensure that return preparers and taxpayers alike know and understand the new requirements. "Without an effective public education campaign and enforcement plan, some argue that little progress is being made at reaching preparers that pose the greatest compliance threats," he added. "This is a critical issue for tax administration and it is important that Congress understands the new requirements and continues its oversight to judge whether the new program improves tax compliance. Taxpayers, paid preparers, and the IRS are best served if this initiative is successful."

Paul Cinquemani, director of member services, business development and government relations at the National Association of Tax Professionals, presented a [discussion paper](#) to the subcommittee on the Return Preparer Review Initiative, which outlined some of the concerns of the preparers.

The paper noted that those tax preparers who "must take the competency examination in order to stay in business naturally have concerns." For example, some are concerned about the threat to their practice, and they want to be able to study for and take the exam immediately.

"They believe they are being singled out as though they're responsible for all the unscrupulous behavior and incompetence in the preparation of tax returns," said the paper. "They believe that all of the effort and resources

expended in this process will have little effect in ridding the system of the incompetent and/or unscrupulous. They believe that they're being unfairly punished and that they're put into the same category as mobile scam artists that proliferate from January 15 through April 1. They believe they're being discriminated against on the basis of credentials. They believe they're effectively being governed by professionals that would like to put them out of business. They are going through 'test anxiety.' Since the average age of our members is 56 years old, it's been quite awhile since they've had to take an exam. Some of them have indicated that they will work right up to December 31, 2013 and then retire. Others will sell their businesses. Some are studying to pass the EA examination so that they're part of the 'governing group.' For some, the lack of due process and the restraint of trade provisions in revised Circular 230 were the last straw. They talk of taking to the courts."

The NATP said it is concerned that the tax administration system will be harmed by a loss of capable preparers that provide for the current compliance enjoyed by the system.

David Williams, director of the Return Preparer Office at the IRS, noted that for decades, most taxpayers prepared their own returns, but over the past 20 to 30 years, the reality of tax filing in this country has changed dramatically. "Today, more than eight out of 10 taxpayers use a tax preparer or tax software," he said. "However, despite the fact that paying taxes is one of the largest financial transactions that the average American family has each year, there have been no basic competency requirements for tax return preparers. Practically anyone can prepare a federal tax return for any other person for a fee. Through the Tax Return Preparer Program, the IRS is in the process of ensuring a basic competency level for tax return preparers and focusing our enforcement efforts on rooting out unscrupulous preparers."

A representative from the American Institute of CPAs testified at the hearing. "We believe the IRS should be commended for its efforts to implement the return preparer program," said Patricia Thompson, chair of the AICPA Tax Executive Committee. "They listened to stakeholder concerns and suggestions, and they've gotten it right."

Thompson noted that the AICPA supports registering paid tax return preparers and issuing them unique preparer tax identification numbers; expanding the ethical umbrella of IRS Circular 230 over all paid income tax preparers; creating a continuing education structure geared towards "unenrolled" preparers, and implementing a basic Form 1040 oriented examination as a condition to become a "registered tax return preparer."

Rep. John Lewis, D-Ga., the ranking Democratic member on the subcommittee, also praised the IRS. "I want to commend the Internal Revenue Service for its leadership in this area," he said. "I am pleased with the overall strategy of the agency and its timeline for phasing in the new requirements. I also am pleased that many in the paid preparer community support the program. We have all heard too many stories of 'fly-by-night' tax preparers who take advantage of low- and middle-income taxpayers. I have long believed that regulating tax preparers will protect taxpayers by making sure that persons who are paid to prepare returns are knowledgeable and trustworthy. I also believe that regulating tax preparers will enhance tax compliance. The new requirements will allow the agency to provide more oversight of preparers. This will allow the agency to detect patterns of fraud or simple error, and take steps to remedy the problem and protect taxpayers."

James R. White, director of strategic issues at the Government Accountability Office, presented a [GAO report](#) on tax preparer regulation, which found that improving tax return accuracy would depend upon the IRS's use of its new requirements.

"The extent to which the new paid preparer requirements will result in more accurate tax returns depends on IRS actions," said the report. In an earlier report in March, the GAO recommended that the IRS document a strategic framework for how it plans to leverage the requirements to improve taxpayer compliance. The IRS agreed and is working on such a plan. The GAO noted that there are various ways for the IRS to leverage the paid preparer requirements in order to provide better service to taxpayers and ultimately improve taxpayer compliance, such as conducting research on which strategies are most effective for improving the quality of tax returns prepared by different types of paid preparers.

Lonnie Gary, the chairman of the Government Relations Committee at the National Association of Enrolled Agents, said in prepared testimony that the NAEA has advocated tax return preparer oversight for years and supports the bulk of the IRS's decisions to date with one major exception.

"Our main area of concern, however, is that the newly licensed will be tested only on a basic individual income tax return (Form 1040) but be allowed to prepare all tax returns," he said. "This approach is troublesome for several reasons. First, it allows those who have taken a basic test to market themselves as licensed to meet all tax preparation needs. Second, it protects only a portion of the general taxpaying public and, frankly, we don't understand why IRS insists on protecting only some taxpayers, but not those with the most complex returns. Enrolled agents believe that taxpayers and the tax community are better served by the basic proposition that tax returns should only be done by a preparer who has shown competency – through testing – on that particular return. To that end, we suggest the agency create a tiered credentialing, with a limited credential (registered tax return preparer) and unlimited credentials/license (enrolled agents, CPAs and attorneys)."

Katherine Pickering, executive director of the Tax Institute at H&R Block and vice president of government relations at the tax prep chain, acknowledged that the issue of tax preparer regulation is vital to H&R Block. She said Block was able to register the majority of its preparers by the start of tax season.

However, she said Block has several concerns about the IRS's program. "The IRS competency exam is redundant to H&R Block's program," she said, listing the concerns in her prepared testimony. "There is no clear success measurement for taxpayer compliance. There is no defined compliance and enforcement program. Late decisions impact the filing season. Group registration is not an option."

She noted that the IRS has informed Block that it would not certify or credential the company's testing program, nor the one developed by the Oregon State Board of Tax Practitioners. "H&R Block already has an extensive training and testing program for its tax preparers, and it includes criminal background checks," she said. "Our program, which is built into the fabric of our company and complies with all existing laws and regulations, already exceeds the new IRS requirements. We must continue administering our own program because it is critical to our business and our reputation."

David Rothstein, a research fellow at the New America Foundation, testified on behalf of the think tank as well as the National Community Tax Coalition and Policy Matters Ohio. He emphasized that low- and moderate-income tax filers

need and deserve high-quality, affordable options with regards to tax preparation assistance, and the costs and approach of paid tax preparation services should be transparent and easy for consumers of such services to understand. However, he noted that several exemptions in the paid preparer regulations had been established in response to issues raised by the industry and there were several implementation challenges that could be modified to better serve working families.

One of his concerns relates to the delayed registration of about 100,000 tax preparers, according to IRS estimates. “The data from this past tax filing season confirms that an extremely high number of fly-by-night paid tax preparation sites set up for a few weeks, charge high fees, and complete subpar and error-riddled returns,” he said in prepared testimony. “At worst, the preparers are totally disingenuous, targeting elderly and low-income filers, and selling them unnecessary services related to transferring funds, recovery rebates, and exaggerated refunds and Social Security claims. A recent wave of claims have suggested that several companies have misled consumers by intimating that they are the IRS or ‘associates’ of some fashion. Attorneys General are filing lawsuits on behalf of consumers in a number of states, and the IRS has issued warnings cautioning tax payers about these abusive practices. But the damage in terms of taxpayers’ faith in the tax preparation sector has been significant, and these continued abuses fly in the face of this new registration program.”